

(Third publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 5th August 1875, and was referred to a Select Committee with instructions to make their report thereon in four months.

No. 7 of 1875.

## THE REFORMATORY SCHOOLS' BILL, 1875.

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### A Bill to provide Reformatory and Industrial Schools.

Whereas it is expedient to provide Reformatory and Industrial Schools; It is hereby enacted as follows:—

Preamble.

#### I.—Preliminary.

1. This Act may be called "The Reformatory Schools Act, 1875":

Short title.

It extends to the whole of British India;

Local extent.

And it shall come into force at once.

Commencement.

Interpretation-clause.

2. In this Act—

"Youthful offender."

"Youthful offender" means—

(a) any boy who, being at the time under the age of fourteen years, has been convicted of any offence punishable under the Indian Penal Code with imprisonment or transportation;

(b) any boy sent to a Reformatory School under this Act.

"Reformatory School" means a school primarily intended for male youthful offenders, and includes a school in which industrial training is provided, and in which boys are lodged, clothed and fed, as well as taught.

"Inspector General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector General of Jails.

"Magistrate" means in the towns of Calcutta, Madras and Bombay, a Magistrate of Police, and elsewhere a Magistrate of the first class.

#### II.—Reformatory Schools.

3. With the previous sanction of the Governor General in Council, the Local Government may—

(a) establish Reformatory Schools at such places as it thinks fit,

(b) use as Reformatory Schools, schools kept by persons willing to obey such rules consistent with this Act as the Local Government may from time to time prescribe in this behalf,

(c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such,

4. Every school so established or used must

Requisites of Schools provide—

(a) separate beds for each boy detained therein;

(b) proper sanitary arrangements, water-supply, food, clothing and bedding for such boys;

(c) the means of giving such boys industrial training;

(d) an infirmary or proper place for the reception of such boys when sick.

5. Every Reformatory School shall, before being used as such, be in-

spected by the Inspector General of Jails, and if in his opinion such school is fitted for the reception of

such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official *Gazette*, and the school shall thereupon be deemed a Reformatory School.

Every such school shall from time to time, and at least once in every year, be visited by the said Inspector General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may from time to time prescribe.

6. Whenever any boy who, in the judgment of the Court before which he is charged, is under the age of fourteen years, is convicted of an offence punishable under the Indian Penal Code with transportation or imprisonment, the Court may, in lieu of sentencing him to transportation or imprisonment, direct him to be sent to a Reformatory School, and to be there detained for a period of not less than two years and not more than seven years.

7. Whenever any boy under the age of twelve years has been or shall be sentenced to imprisonment, the officer in charge of the Jail in which such person is confined may, with the sanction of the Local Government, bring him before the Magistrate within whose jurisdiction such Jail is situate, and the Magistrate, if he thinks fit, may direct him to be sent to a Reformatory School, and to be there detained for a period of not less than two and not more than seven years.

8. Whenever it appears to a Magistrate from evidence adduced before him that any boy under the age of fourteen years—

- (a) frequents the company of reputed robbers, house-breakers, thieves, public gamblers, or vagrants, or
- (b) is without any ostensible means of subsistence,

such Magistrate may direct him to be sent to a Reformatory School and to be there detained for a period of not less than two years and not more than seven years.

9. Nothing contained in sections six, seven and eight shall be deemed to authorize the detention in a Reformatory School of any person above the age of sixteen years.

10. The Local Government may at any time order any youthful offender to be discharged from a Reformatory School, or to be removed from one Reformatory School to another such school situate within the territories subject to such Government, but so that the whole period of detention of the offender in a Reformatory School shall not be increased by such removal.

### III.—Expenses of Reformatory Schools.

11. Notwithstanding anything contained in any law for the time being in force in British India, every municipal corporation, municipal committee, or other body of persons

duly appointed to conduct the affairs of a municipality may, with the previous sanction of the Local Government, pay out of the funds at their disposal, towards the establishment, or maintenance, or both, of a Reformatory School within the limits of the place for which they are so appointed, such sum as may be agreed on in this behalf by and between the corporation, committee or body and the Local Government.

12. The parent or other person legally liable to maintain any youthful offender detained in a Reformatory School, shall, if of sufficient ability, contribute to his support and maintenance therein a sum not exceeding five rupees per month.

On the complaint of the said Inspector General, or of any police officer under his directions (with which directions the police officer is hereby required to comply) at any time during the continuance of the offender in the school, any Magistrate having jurisdiction at the place where the person liable as aforesaid resides, may, on summons to such person, examine into his ability, and may, if the Magistrate thinks fit, make an order on him for payment to the said Inspector General of such monthly sum not exceeding five rupees per month as to the Magistrate seems reasonable during the whole or any part of the period for which the offender is liable to be detained in the school.

Every such order may specify the time during which the payment is to be made, or may be until further order.

Every such payment shall be accounted for as the Local Government directs.

The Local Government may in its discretion remit all or any part of any payment so ordered.

Any Magistrate having jurisdiction to make such order may from time to time vary the same as circumstances require on the application either of the person on whom the order is made, or of the said Inspector General, on fourteen days' notice being first given of such application to the Inspector General or such person respectively.

In case of wilful neglect to comply with any order under this section, the Magistrate may proceed in manner provided by the Code of Criminal Procedure, section 536, clause 3.

### IV.—Boards of Management.

13. For the control and management of every Reformatory School established under section three, clause (a), the Local Government shall,

and for the control and management of every Reformatory School used under section three, clause (b), the Local Government may,

from time to time appoint not less than five persons, of whom one at least shall be an officer of Government, and two at least shall be Natives of India.

Such persons shall be called the Board of Management of the School for which they are appointed.

The Local Government may from time to time suspend or remove any person so appointed.

14. At every meeting of the Board of Management of a school established under section three, clause (a), the officer of Government (or if there be more than one such officer, the senior officer) present shall be Chairman, and if there be no such officer present, a Chairman shall be elected by a majority of the Members of the Board.

15. The Board of Management shall appoint, and may (subject to such rules as the Local Government may from time to time prescribe in this behalf) suspend or remove, a Superintendent of the Reformatory School under their control and such other subordinate officers as may be necessary.

16. The Board of Management may permit any youthful offender sent to a Reformatory School who has attained the age of fourteen years, by license under the hand of their Chairman, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such offender employed at some trade, occupation, or calling.

The license shall be in force for three months and no longer, but may at any time before the expiration of the period for which the offender has been directed to be detained, be renewed from time to time for three months.

17. The license shall be cancelled at the desire of the employer named in the license; and if it appears to the Board of Management that any complaint made by the employer of misconduct on the part of the youthful offender is just, no other license in respect of the same offender shall be given until twelve months after the expiration of the former license.

18. If the employer named in the license die, or cease from business, during the term of the license, the license shall thereupon cease and determine.

19. If it appears to the Board of Management that the employer has ill-treated the offender, or has not adequately provided for his lodging and maintenance, the Board of Management may cancel the license.

20. The Board of Management of any Reformatory School shall be deemed to be the guardian of any youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*),

and if it appear to the Board of Management that any such offender has behaved well during one or more periods of a license, the Board may apprentice him under the provisions of the said Act, and on such apprenticeship the respon-

sibility of the Board as regards such offender shall cease.

21. With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act to regulate—

- (a) the conduct of business of the Board,
- (b) the management of the School,
- (c) the education and industrial training of youthful offenders,
- (d) visits to and communication with youthful offenders,
- (e) punishments for offences committed in the School by youthful offenders,
- (f) the granting of licenses to employers of youthful offenders,
- (g) and, generally, for carrying out the purposes of this Act.

#### F.—Offences in relation to Reformatory Schools.

22. Except with the sanction of the Board of Management, no Superintendent of a Reformatory School shall punish any youthful offender with more than five stripes, or with irons, or with solitary confinement for more than six hours.

23. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one hundred rupees, or with both.

24. A Police Officer may, without orders from a Magistrate, and without a warrant, arrest any youthful offender sent to a Reformatory School under section six, seven, or eight, who has escaped from such school, or from his employer, and take him back to such school or to his employer.

#### STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to establish in British India institutions which so far as regards males, may serve the combined purposes of the Reformatory Schools and the Industrial Schools so successfully carried on in England under 29 & 30 Vic., cc. 117, 118.

The peculiar circumstances of India render it inexpedient to bring girls within the scope of the Bill.

With the previous sanction of the Governor General in Council, Local Governments are empowered to establish Reformatory Schools (which are defined so as to include schools in which industrial training is provided), or to use as Reformatory Schools, schools kept by persons willing to obey such rules as Government may prescribe.

Provision is made that these schools shall be furnished with the proper requisites and periodically inspected.



Three classes of boys may be sent to Reformatory Schools:

- (a) boys under 14 convicted of offences punishable with transportation or imprisonment, but not sentenced;
- (b) boys under 12 sentenced to imprisonment; and
- (c) boys under 14 who associate with thieves, vagrants, &c., or are without visible means of subsistence.

The minimum time for which a boy will be sent to a Reformatory School is two years, the maximum seven years. But no boy will be detained after he attains the age of 16.

As to the expenses of these schools, Municipalities are empowered, with the sanction of the Local Government, to apply municipal funds to establish or maintain Reformatory Schools, and Magistrates of the first class are empowered to order the parents of youthful offenders to contribute a moderate monthly sum to their support.

The Bill contains provisions as to the Boards which are to control and manage the schools. Two at least of these managers will always be Natives of India. The Board will have power to license youthful offenders to employers of labour; to cancel such licenses at the employer's request; to apprentice youthful offenders; and to make subsidiary rules.

Lastly, the Bill contains some clauses as to offences in relation to Reformatory Schools.

SIMLA;  
The 26th July 1875. } A. J. ARBUTHNOT.

WHITLEY STOKES,  
Secy. to the Govt. of India.

(First publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th August 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 8 of 1875.

## THE CENTRAL PROVINCES LAWS BILL, 1875.

### CONTENTS.

#### PREAMBLE.

#### SECTIONS.

1. Short title.  
Local extent.  
Commencement.
2. Repeal of enactments and rules.  
Proviso as to law relating to land-revenue and Courts of Wards.
3. Certain enactments to be deemed to be in force.

#### SECTIONS.

4. Confirmation of existing Acts.
5. Rules of decision in cases of certain classes.
6. Rule in cases not expressly provided for.
7. Articles exempt from attachment.
8. Power to make subsidiary rules.
9. Penalty for breach of rules.
10. Publication of rules.  
Force of rules.

#### SCHEDULE.

#### A Bill to declare and amend the Law in force in the Central Provinces.

Whereas it is expedient to declare and amend certain portions of the law in force in the Central Provinces; It is hereby enacted as follows:—

1. This Act may be called "The Central Provinces Laws Act, 1875."

Short title.

It extends to the territories now under the administration of the Chief Commissioner of the Central Provinces;

Local extent.

And it shall come into force on the passing thereof.

Commencement.

2. On and from the date on which this Act comes into force the following shall be repealed, that is to say:—

Repeal of enactments and rules.

(a) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force;

(b) all Acts of the Governor General in Council (except the Acts mentioned in the schedule hereto annexed), which do not expressly or by necessary implication extend to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by an Act of the Governor General in Council;

(c) all rules, regulations and enactments not being Statutes, Bengal Regulations, Acts of the Governor General in Council, or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation, or Act of the Governor General in Council:

Provided that nothing in this section shall affect any rules, regulations, enactments or laws relating to the settlement and collection of land-revenue or the jurisdiction of Courts of Wards, which may be in force at the passing of this Act in any part of the said territories.

3. On and from the said date the enactments specified in the schedule hereto be deemed to be in force. to annexed shall be deemed to be in force throughout the said territories, to the extent mentioned in the third column of the said schedule.

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised

and performed by the authorities mentioned in that column.

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule.

4. Every Act of the Governor General in Council, which extends, or can by notification be extended, to the territories which were under the administration of the said Chief Commissioner at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said Chief Commissioner.

5. In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

6. In cases not provided for by section five, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

7. Implements of husbandry and bullocks *bond fide* kept for ploughing and implements of trade are exempted from attachment and sale in execution of decrees of the Civil Courts.

8. The said Chief Commissioner may from time to time make rules consistent with this Act as to the following matters:—

- (a) the maintenance of watch and ward and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies;
- (b) the imposition of taxes for the purposes mentioned in clause (a) of this section on persons holding or joining any of the assemblies therein referred to;
- (c) the custody of judicial records, civil and criminal, and the destruction from time to time of such of the said records as it may be deemed unnecessary to keep;
- (d) the appointment, duties, punishment, suspension and dismissal of all ministerial officers.

9. The Chief Commissioner may, in making any rule under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

10. All rules made under this Act shall, when sanctioned by the Governor General in Council, be published in the *Central Provinces Gazette*, and shall thereupon have the force of law.

## SCHEDULE.

(See section 3.)

## A.—BENGAL REGULATIONS.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
I of 1798 ...	Conditional sales of land under deeds of Bai-bil-wafá or other deeds of the same nature.	The whole ...	The functions of "the Dīwānī Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
V of 1799 ...	Estates of Intestates.	Sections IV, V and VI ...	The functions of the Court of Sadr Dīwānī Adálat shall be performed by the Judicial Commissioner.
X of 1804 ...	Punishment of State offences by Courts Martial.	So much as has not been repealed.	
XI of 1806 ...	Passage of Troops.	Sections II to VI and section VIII, with the exception of such part as authorizes Collectors and their Native Officers, or Magistrates and their Police Officers, to give their official aid in procuring "coolies" for the purpose of facilitating the march of troops or the progress of travellers, and with the exception in section VIII of the words and figures "under the rules prescribed by Regulation V, 1804."	The powers of the "Governor General in Council" and of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XVII of 1806	Redemption and foreclosure of mortgages and conditional sales of land under deeds of Bai-bil-wafá, &c.	Sections VII and VIII ...	The functions of the "Zila or City Court of Dīwānī Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
XX of 1810 ...	Camp-followers and Bázars.	So much as has not been repealed, except sections I to III, VI, XX, and in section VII the words "as described in the plans."	
XI of 1812 ...	Foreign Immigrants.	So much as has not been repealed.	The powers of the "Nizámut Adálat" shall be exercised by the Judicial Commissioner.



## SCHEDULE,—(continued.)

## A.—BENGAL REGULATIONS,—continued.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
V of 1817 ...	Hidden treasure	The whole (including sections III and IV) with the exception of— (a) the first portion of section V down to and including the words "to such treasure." (b) the following words in section VIII, that is to say, "on the application of the vakeel of Government, under instructions from the Board of Revenue, or the Board of Commissioners in the Western Provinces, or the Commissioner in Behar and Behares."	The functions of the Zila or City Court shall be performed by the Court of the Deputy Commissioner. Those of the Provincial Court by that of the Commissioner, and those of the Sadr Diwani Adalat by that of the Judicial Commissioner.
III of 1818 ...	State Prisoners...	So much as has not been repealed.	
VI of 1819 ...	Ferries ...	So much as has not been repealed, with the exception of, in section VII, the words and figures "in no case exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Regulation XIX, 1816," and in section X the words and figures from and including "in the manner" down to the end of the section.	
VI of 1825 ...	Supply of troops on the march.	The whole ...	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XI of 1825 ...	Alluvion and Diluvion.	The whole.	
XX of 1825 ...	Jurisdiction of Courts Martial.	Sections I and II.	
V of 1827 ...	Administration of landed property.	So much as has not been repealed, except the words and figures "and clauses five and six, section XVI, Regulation III, 1803."	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.

## SCHEDULE,—(continued).

## B.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year of Act.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
VIII of 1851...	Tolls on Roads and Bridges.	The whole Act, except section one and the schedule.	
XVIII of 1853	Sale of spirits in Cantonments.	The whole Act.	
XIII of 1857...	Opium ...	Sections twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine.	
XL of 1858 ...	Minors ...	The whole Act, except section one, and subject to the amendment made by the Indian Majority Act, 1875.	
XV of 1864 ...	Tolls ...	The whole Act.	

## STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to declare what shall be deemed to be the law throughout the Central Provinces.

When that Chief Commissionership was formed in 1861, it comprised only the Province of Nāgpur and the Sāgar and Narbada territories. Since then there have been gradually added to it Sambulpur with its dependencies, the District of Nimār and Bijeragogarh.

In some of these territories certain Bengal Regulations were deemed to be in force: in others only what is called their spirit: in others mere executive rules. In his report for 1862-63, the then Chief Commissioner says that there were then "a variety of laws, rules and systems, each having force more or less in the several parts, but none having force over the whole." What was true in 1863 is to a great extent true in 1875; and the doubts and difficulties caused by this confusion are daily more and more felt.

The present Bill, which has been framed at the desire of the Local Government and to a large extent by the Judicial Commissioner, attempts to remove these doubts and difficulties. It repeals throughout the Central Provinces all Indian laws and rules except those mentioned or referred to in section 2 and the schedule, and it declares that certain enactments specified in that schedule shall be in force throughout those Provinces. To preclude doubts which might arise from the way in which additions have from time to time been made to the Central Provinces, section 4 declares that every Act which extends to the territories under the administration of the Chief Commissioner at the time of its passing, shall extend to all territories now under his administration.

The Bill further prescribes a rule of decision in certain cases of litigation between Natives. It exempts from attachment implements of husbandry and plough bullocks; and it empowers (section 8) the Chief Commissioner to make subsidiary rules as to a variety of matters.

The Bill leaves untouched the revenue system of the Central Provinces, which will probably be dealt with by another enactment.

SIMLA;  
The 7th August 1875.

}

DOUGLAS FORSYTH.

WHITLEY STOKES,  
Secy. to the Govt. of India.





# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, AUGUST 28, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th August 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 8 of 1875.

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Proviso as to law relating to land-revenue and Courts of Wards.
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4. Confirmation of existing Acts.
5. Rules of decision in cases of certain classes.
6. Rule in cases not expressly provided for.

7. Articles exempt from attachment.
8. Power to make subsidiary rules.
9. Penalty for breach of rules.
10. Publication of rules,  
Force of rules.

##### SCHEDULE.

*A Bill to declare and amend the Law in force in the Central Provinces.*

Whereas it is expedient to declare and amend certain portions of the law in force in the Central Provinces; It is hereby enacted as follows:—

1. This Act may be called "The Central Provinces Laws Act, 1875:—"

It extends to the territories now under the administration of the Chief Commissioner of the Central Provinces;

And it shall come into force on the passing thereof.

2. On and from the date on which this Act comes into force the following shall be repealed, that is to say:—

(a) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force;

(b) all Acts of the Governor General in Council (except the Acts mentioned in the schedule hereto annexed), which do not expressly or by necessary implication extend to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by an Act of the Governor General in Council;

(c) all rules, regulations and enactments not being Statutes, Bengal Regulations, Acts of the Governor General in Council, or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation, or Act of the Governor General in Council:

Provided that nothing in this section shall affect any rules, regulations, enactments or laws relating to the settlement and collection of land-revenue or the jurisdiction of Courts of Wards, which may be in force at the passing of this Act in any part of the said territories.

3. On and from the said date the enactments specified in the schedule here-  
Certain enactments to be deemed to be in force. to annexed shall be deemed to be in force throughout the said territories, to the extent mentioned in the third column of the said schedule.

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised and performed by the authorities mentioned in that column.

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule.

4. Every Act of the Governor General in Council, which extends, or can by  
Confirmation of existing Acts. notification be extended, to the territories which were under the administration of the said Chief Commissioner at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said Chief Commissioner.

5. In questions regarding inheritance, special  
Rules of decision in cases of certain classes. property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family

any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

6. In cases not provided for by section five, or  
Rule in cases not expressly provided for. by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

7. Implements of husbandry and bullocks  
Articles exempt from attachment. *bond fide* kept for ploughing and implements of trade are exempted from attachment and sale in execution of decrees of the Civil Courts.

8. The said Chief Commissioner may from time  
Power to make subsidiary rules. to time make rules consistent with this Act as to the following matters:—

- (a) the maintenance of watch and ward and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies;
- (b) the imposition of taxes for the purposes mentioned in clause (a) of this section on persons holding or joining any of the assemblies therein referred to;
- (c) the custody of judicial records, civil and criminal, and the destruction from time to time of such of the said records as it may be deemed unnecessary to keep;
- (d) the appointment, duties, punishment, suspension and dismissal of all ministerial officers.

9. The Chief Commissioner may, in making  
Penalty for breach of rules. any rule under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

10. All rules made under this Act shall, when  
Publication of rules. sanctioned by the Governor General in Council, be published in the *Central Provinces Gazette*, and shall  
Force of rules. thereupon have the force of law.

## SCHEDULE.

(See section 3.)

## A.—BENGAL REGULATIONS.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
I of 1798 ...	Conditional sales of land under deeds of Bai-bil-wafá or other deeds of the same nature.	The whole ...	The functions of "the Dīwānī Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
V of 1799 ...	Estates of Intestates.	Sections IV, V and VI ...	The functions of the Court of Sadr Dīwānī Adálat shall be performed by the Judicial Commissioner.
X of 1804 ...	Punishment of State offences by Courts Martial.	So much as has not been repealed.	
XI of 1806 ...	Passage of Troops.	Sections II to VI and section VIII, with the exception of such part as authorizes Collectors and their Native Officers, or Magistrates and their Police Officers, to give their official aid in procuring "coolies" for the purpose of facilitating the march of troops or the progress of travellers, and with the exception in section VIII of the words and figures "under the rules prescribed by Regulation V, 1804."	The powers of the "Governor General in Council" and of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XVII of 1806	Redemption and foreclosure of mortgages and conditional sales of land under deeds of Bai-bil-wafá, &c.	Sections VII and VIII ...	The functions of the "Zila or City Court of Dīwānī Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
XX of 1810 ...	Camp-followers and Bázárs.	So much as has not been repealed, except sections I to III, VI, XX, and in section VII the words "as described in the plans."	
XI of 1812 ...	Foreign Immigrants.	So much as has not been repealed.	The powers of the "Nizámut Adálat" shall be exercised by the Judicial Commissioner.



## SCHEDULE,—(continued.)

## A.—BENGAL REGULATIONS,—continued.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
V of 1817 ...	Hidden treasure	The whole (including sections III and IV) with the exception of— (a) the first portion of section V down to and including the words “to such treasure.” (b) the following words in section VIII, that is to say, “on the application of the vakeel of Government, under instructions from the Board of Revenue, or the Board of Commissioners in the Western Provinces, or the Commissioner in Behar and Benares.”	The functions of the Zila or City Court shall be performed by the Court of the Deputy Commissioner. Those of the Provincial Court by that of the Commissioner, and those of the Sadr Dīwānī Adālat by that of the Judicial Commissioner.
III of 1818 ...	State Prisoners...	So much as has not been repealed.	
VI of 1819 ...	Ferries ...	So much as has not been repealed, with the exception of, in section VII, the words and figures “in no case exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Regulation XIX, 1816,” and in section X the words and figures from and including “in the manner” down to the end of the section.	
VI of 1825 ...	Supply of troops on the march.	The whole ...	The powers of the “Board of Revenue” shall be exercised by the Chief Commissioner.
XI of 1825 ...	Alluvion and Diluvion.	The whole.	
XX of 1825 ...	Jurisdiction of Courts Martial.	Sections I and II.	
V of 1827 ...	Administration of landed property.	So much as has not been repealed, except the words and figures “and clauses five and six, section XVI, Regulation III, 1803.”	The powers of the “Board of Revenue” shall be exercised by the Chief Commissioner.

## SCHEDULE,—(continued).

## B.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year of Act.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
VIII of 1851...	Tolls on Roads and Bridges.	The whole Act, except section one and the schedule.	
XVIII of 1853	Sale of spirits in Cantonments.	The whole Act.	
XIII of 1857...	Opium ...	Sections twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine.	
XL of 1858 ...	Minors ...	The whole Act, except section one, and subject to the amendment made by the Indian Majority Act, 1875.	
XV of 1864 ...	Tolls ...	The whole Act.	

## STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to declare what shall be deemed to be the law throughout the Central Provinces.

When that Chief Commissionership was formed in 1861, it comprised only the Province of Nágpur and the Sagar and Narbada territories. Since then there have been gradually added to it Sambulpur with its dependencies, the District of Nimár and Bijeragogarh.

In some of these territories certain Bengal Regulations were deemed to be in force: in others only what is called their spirit: in others mere executive rules. In his report for 1862-63, the then Chief Commissioner says that there were then "a variety of laws, rules and systems, each having force more or less in the several parts, but none having force over the whole." What was true in 1863 is to a great extent true in 1875; and the doubts and difficulties caused by this confusion are daily more and more felt.

The present Bill, which has been framed at the desire of the Local Government and to a large extent by the Judicial Commissioner, attempts to remove these doubts and difficulties. It repeals throughout the Central Provinces all Indian laws and rules except those mentioned or referred to in section 2 and the schedule, and it declares that certain enactments specified in that schedule shall be in force throughout those Provinces. To preclude doubts which might arise from the way in which additions have from time to time been made to the Central Provinces, section 4 declares that every Act which extends to the territories under the administration of the Chief Commissioner at the time of its passing, shall extend to all territories now under his administration.

The Bill further prescribes a rule of decision in certain cases of litigation between Natives. It exempts from attachment implements of husbandry and plough bullocks; and it empowers (section 8) the Chief Commissioner to make subsidiary rules as to a variety of matters.

The Bill leaves untouched the revenue system of the Central Provinces, which will probably be dealt with by another enactment.

SIMLA;  
The 7th August 1875.

}

DOUGLAS FORSYTH.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 4, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Third publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th August 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 8 of 1875.

### THE CENTRAL PROVINCES LAWS BILL, 1875.

#### CONTENTS.

##### PREAMBLE.

##### SECTIONS.

1. Short title.  
Local extent.  
Commencement.
2. Repeal of enactments and rules.  
Proviso as to law relating to land-revenue and Courts of Wards.
3. Certain enactments to be deemed to be in force.
4. Confirmation of existing Acts.
5. Rules of decision in cases of certain classes.
6. Rule in cases not expressly provided for.

7. Articles exempt from attachment.
8. Power to make subsidiary rules.
9. Penalty for breach of rules.
10. Publication of rules.  
Force of rules.

##### SCHEDULE.

*A Bill to declare and amend the Law in force in the Central Provinces.*

Whereas it is expedient to declare and amend certain portions of the law in force in the Central Provinces; It is hereby enacted as follows:—

1. This Act may be called "The Central Provinces Laws Act, 1875."

It extends to the territories now under the administration of the Chief Commissioner of the Central Provinces;

And it shall come into force on the passing thereof.

2. On and from the date on which this Act comes into force the following shall be repealed, that is to say:—

(a) all Bengal Regulations except the Regulations or parts of Regulations hereinafter declared to be in force;

(b) all Acts of the Governor General in Council (except the Acts mentioned in the schedule hereto annexed), which do not expressly or by necessary implication extend to the said territories or any part thereof, and have not been extended thereto in exercise of a power conferred by an Act of the Governor General in Council;



(c) all rules, regulations and enactments not being Statutes, Bengal Regulations, Acts of the Governor General in Council, or rules or regulations made in exercise of a power conferred by a Statute, Bengal Regulation, or Act of the Governor General in Council:

Provided that nothing in this section shall affect any rules, regulations, enactments or laws relating to the settlement and collection of land-revenue or the jurisdiction of Courts of Wards, which may be in force at the passing of this Act in any part of the said territories.

3. On and from the said date the enactments specified in the schedule here-  
Certain enactments to be deemed to be in force. to annexed shall be deemed to be in force throughout the said territories, to the extent mentioned in the third column of the said schedule.

But the powers and duties incident to the operation of the same enactments, so far as such powers and duties are referred to in the fourth column of the said schedule, shall be exercised and performed by the authorities mentioned in that column.

Nothing in this section shall be deemed to affect the operation of any enactment not mentioned in the said schedule.

4. Every Act of the Governor General in Council, which extends, or can by notification be extended, to the territories which were under the administration of the said Chief Commissioner at the time of the passing thereof, shall extend, or may by notification be extended, as the case may be, to all the territories now under the administration of the said Chief Commissioner.

5. In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be the Muhammadan law in cases where the parties are Muhammadans, and the Hindú law in cases where the parties are Hindús, except in so far as such law has been by legislative enactment altered or abolished, or is opposed to the provisions of this Act:

Provided that when among any class or body of persons or among the members of any family

any custom prevails which is inconsistent with the law applicable between such persons under this section, and which, if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.

6. In cases not provided for by section five, or by any other law for the time being in force, the Courts shall act according to justice, equity and good conscience.

7. Implements of husbandry and bullocks *bond fide* kept for ploughing and implements of trade are exempted from attachment and sale in execution of decrees of the Civil Courts.

8. The said Chief Commissioner may from time to time make subsidiary rules consistent with this Act as to the following matters:—

- (a) the maintenance of watch and ward and the establishment of a proper system of conservancy and sanitation at fairs and other large public assemblies;
- (b) the imposition of taxes for the purposes mentioned in clause (a) of this section on persons holding or joining any of the assemblies therein referred to;
- (c) the custody of judicial records, civil and criminal, and the destruction from time to time of such of the said records as it may be deemed unnecessary to keep;
- (d) the appointment, duties, punishment, suspension and dismissal of all ministerial officers.

9. The Chief Commissioner may, in making any rule under this Act, attach to the breach of it, in addition to any other consequences that would ensue from such breach, a punishment, on conviction before a Magistrate, not exceeding one month's imprisonment, or two hundred rupees fine, or both.

10. All rules made under this Act shall, when sanctioned by the Governor General in Council, be published in the *Central Provinces Gazette*, and shall thereupon have the force of law.

## SCHEDULE.

(See section 3.)

## A.—BENGAL REGULATIONS.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
I of 1798 ...	Conditional sales of land under deeds of Bai-bil-wafá or other deeds of the same nature.	The whole ...	The functions of "the Dīwání Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
V of 1799 ...	Estates of Intestates.	Sections IV, V and VI ...	The functions of the Court of Sadr Dīwání Adálat shall be performed by the Judicial Commissioner.
X of 1804 ...	Punishment of State offences by Courts Martial.	So much as has not been repealed.	
XL of 1806 ...	Passage of Troops.	Sections II to VI and section VIII, with the exception of such part as authorizes Collectors and their Native Officers, or Magistrates and their Police Officers, to give their official aid in procuring "coolies" for the purpose of facilitating the march of troops or the progress of travellers, and with the exception in section VIII of the words and figures "under the rules prescribed by Regulation V, 1804."	The powers of the "Governor General in Council" and of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XVII of 1806	Redemption and foreclosure of mortgages and conditional sales of land under deeds of Bai-bil-wafá, &c.	Sections VII and VIII ...	The functions of the "Zila or City Court of Dīwání Adálat" shall be discharged by the "District Court" as defined in section three, Act XIV of 1865 (The Central Provinces Courts' Act).
XX of 1810 ...	Camp-followers and Bázárs.	So much as has not been repealed, except sections I to III, VI, XX, and in section VII the words "as described in the plans."	
XI of 1812 ...	Foreign Immigrants.	So much as has not been repealed.	The powers of the "Nizámut Adálat" shall be exercised by the Judicial Commissioner.

## SCHEDULE,—(continued.)

## A.—BENGAL REGULATIONS,—continued.

Number and year of Regulation.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
V of 1817 ...	Hidden treasure	The whole (including sections III and IV) with the exception of— (a) the first portion of section V down to and including the words "to such treasure." (b) the following words in section VIII, that is to say, "on the application of the vakeel of Government, under instructions from the Board of Revenue, or the Board of Commissioners in the Western Provinces, or the Commissioner in Behar and Benares."	The functions of the Zila or City Court shall be performed by the Court of the Deputy Commissioner. Those of the Provincial Court by that of the Commissioner, and those of the Sadr Diwānī Adālat by that of the Judicial Commissioner.
III of 1818 ...	State Prisoners...	So much as has not been repealed.	
VI of 1819 ...	Ferries, ...	So much as has not been repealed, with the exception of, in section VII, the words and figures "in no case exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Regulation XIX, 1816," and in section X the words and figures from and including "in the manner" down to the end of the section.	
VI of 1825 ...	Supply of troops on the march.	The whole ...	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.
XI of 1825 ...	Alluvion and Diluvion.	The whole.	
XX of 1825 ...	Jurisdiction of Courts Martial.	Sections I and II.	
V of 1827 ...	Administration of landed property.	So much as has not been repealed, except the words and figures "and clauses five and six, section XVI, Regulation III, 1808."	The powers of the "Board of Revenue" shall be exercised by the Chief Commissioner.



## SCHEDULE,—(continued).

## B.—ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year of Act.	Subject.	Extent of operation.	Powers or duties how to be exercised or performed.
1	2	3	4
VIII of 1851...	Tolls on Roads and Bridges.	The whole Act, except section one and the schedule.	
XVIII of 1853	Sale of spirits in Cantonments.	The whole Act.	
XIII of 1857...	Opium ...	Sections twenty-one, twenty-two, twenty-three, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine.	
XL of 1858 ...	Minors ...	The whole Act, except section one, and subject to the amendment made by the Indian Majority Act, 1875.	
XV of 1864 ...	Tolls ...	The whole Act.	

## STATEMENT OF OBJECTS AND REASONS.

The primary object of this Bill is to declare what shall be deemed to be the law throughout the Central Provinces.

When that Chief Commissionership was formed in 1861, it comprised only the Province of Nagpur and the Sagar and Nerbada territories. Since then there have been gradually added to it Sambulpur with its dependencies, the District of Nimár and Bijeraggarh.

In some of these territories certain Bengal Regulations were deemed to be in force: in others only what is called their spirit: in others mere executive rules. In his report for 1862-63, the then Chief Commissioner says that there were then "a variety of laws, rules and systems, each having force more or less in the several parts, but none having force over the whole." What was true in 1863 is to a great extent true in 1875; and the doubts and difficulties caused by this confusion are daily more and more felt.

The present Bill, which has been framed at the desire of the Local Government and to a large extent by the Judicial Commissioner, attempts to remove these doubts and difficulties. It repeals throughout the Central Provinces all Indian laws and rules, except those mentioned or referred to in section 2 and the schedule, and it declares that certain enactments specified in that schedule shall be in force throughout those Provinces. To preclude doubts which might arise from the way in which additions have from time to time been made to the Central Provinces, section 4 declares that every Act which extends to the territories under the administration of the Chief Commissioner at the time of its passing, shall extend to all territories now under his administration.

The Bill further prescribes a rule of decision in certain cases of litigation between Natives. It exempts from attachment implements of husbandry and plough bullocks; and it empowers (section 8) the Chief Commissioner to make subsidiary rules as to a variety of matters.

The Bill leaves untouched the revenue system of the Central Provinces, which will probably be dealt with by another enactment.

SIMLA;  
The 7th August 1875.

}

DOUGLAS FORSYTH.

WHITLEY STOKES,  
Secy. to the Govt. of India.

(First publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 9 of 1875.

*A Bill to amend the law relating to Opium.*

Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Preamble.

Short title.

Local extent.

Commencement.

(a). In the Provinces respectively subject to the Governors in Council of Fort Saint George and Bombay, at once:

(b). In each of the other Provinces of British India, on such day as the Governor General in Council, by notification in the *Gazette of India*, directs in that behalf.

2. Sections eight to sixteen (both inclusive) of Bombay Regulation XXI of 1827, are hereby repealed.

3. Unless in accordance with rules framed under this Act or with any enactment for the time being in force, no one shall—

- (a), cultivate the poppy or manufacture opium;
- (b) possess any quantity of opium exceeding five tolahs in weight;
- (c) transport opium from one place to another; or
- (d) sell opium or preparations or admixtures of opium.

4. The Local Government may make rules to regulate, within the whole or any part of the territories subject to such Government, all or any of the following matters:—

- (a) the cultivation of the poppy;
- (b) the possession of any quantity of opium exceeding five tolahs in weight;
- (c) the transport of opium; and
- (d) the sale of opium and of preparations and admixtures of opium.

The Local Government may from time to time alter and add to such rules.

Such rules, alterations and additions shall be submitted for the sanction of the Governor General in Council, and on receiving such sanction, shall be published in the local official *Gazette*, and shall thereupon have the force of law.

5. Whoever cultivates the poppy in contravention of rules made and published under section four, or before such rules are made and published as aforesaid, shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months; and the poppy so cultivated, and the opium (if any) produced therefrom, may be confiscated by the convicting Magistrate.

6. Whoever, not being authorized in this behalf under rules made and published under this Act, or before such rules are so made and published, has in his possession a greater quantity of opium than five tolahs weight,

and whoever transports opium in contravention of rules so made and published, or before such rules are so made and published,

shall for every such offence be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months:

Provided that if the opium in respect of which such offence is committed exceeds the weight of twenty sers, the fine may be increased at a rate not exceeding fifty rupees the ser for all the opium so found in excess.

On any conviction under this section, the opium, together with the vessels, packages and coverings in which it is found, and the animals and conveyances used in carrying it, may be confiscated by the convicting Magistrate.

7. Whoever sells opium in contravention of rules so made and published, or before such rules are so made and published, shall for every such offence be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months.

## STATEMENT OF OBJECTS AND REASONS.

The poppy is grown extensively in Lower Bengal, the North-Western Provinces, Oudh and Central India, and to some slight extent in the Panjáb, the Central Provinces, Berar and Mysore, and in part of Bombay. Little or no opium is produced in Madras, British Burma or Assam.

The attention of Local Governments and of the Government of India has of late been frequently drawn to the insufficiency of the existing law on the subject.

In the Bengal Presidency, including the North-Western Provinces, Oudh and the Panjáb, the law is clear and satisfactory.

But in some of the more recently formed Administrations, such as the Central Provinces, Assam and British Burma, the applicability of the Bengal law is doubtful, and in Bombay and Madras the law on the subject is altogether defective.

In the Bombay Presidency, the same control is in point of fact exercised as in Bengal for checking the growth of the poppy and the manufacture of opium; but the legal authority for this action is insufficient.

In Madras no check, either legislative or administrative, exists at present on the growth of the poppy or the transport, possession or storage of opium, and practices have resulted injurious alike to the public revenue and to public morality and health.

The Governments of Madras and Bombay have both contemplated supplying these defects by local legislation. But it is considered expedient by one simple and comprehensive Imperial law to ensure that the Imperial revenue derived from opium is nowhere left without adequate protection.

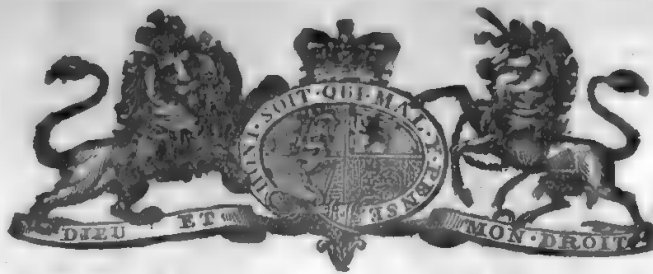
The Bill, as now introduced, will not alter the state of things prevailing in the Bengal Presidency, nor will it involve any alteration of practice inconsistent with the system of export duty in force in Western India. The control exercised by the State in Bengal and Northern India, is equally necessary whichever system prevails. The power which Government by law possesses in the Bengal Presidency will now be extended to all parts of India,—doubts, where they exist, will be removed,—and the needed legislation will be provided for Madras and Bombay.

SIMLA,

The 23rd August 1875. }

W. MUIR.

WHITLEY STOKES,  
*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 11, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

(Second publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 9 of 1875.

#### *A Bill to amend the law relating to Opium.*

Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Preamble.

Short title.

Local extent.

Commencement.

1. This Act may be called "The Indian Opium Act, 1875."

It extends to the whole of British India;

And it shall come into force as follows:—

(a). In the Provinces respectively subject to the Governors in Council of Fort Saint George and Bombay, at once:

(b). In each of the other Provinces of British India, on such day as the Governor General in Council, by notification in the *Gazette of India*, directs in that behalf.

2. Sections eight to sixteen (both inclusive) of Bombay Regulation XXI of 1827, are hereby repealed.

Repeal of Bombay Regulation XXI of 1827, secs. 8 to 16.

3. Unless in accordance with rules framed under this Act or with any enactment for the time being in force, no one shall—

- (a) cultivate the poppy or manufacture opium;
- (b) possess any quantity of opium exceeding five tolahs in weight;
- (c) transport opium from one place to another; or
- (d) sell opium or preparations or admixtures of opium.

4. The Local Government may make rules to regulate, within the whole or any part of the territories subject to such Government, all or any of the following matters:—

- (a) the cultivation of the poppy;
- (b) the possession of any quantity of opium exceeding five tolahs in weight;
- (c) the transport of opium; and
- (d) the sale of opium and of preparations and admixtures of opium.

The Local Government may from time to time alter and add to such rules.

Such rules, alterations and additions shall be submitted for the sanction of the Governor General in Council, and on receiving such sanction, shall be published in the local official *Gazette*, and shall thereupon have the force of law.

5. Whoever cultivates the poppy in contravention of rules made and published under section four, or before such rules are made and published as aforesaid, shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months;

Penalty for illegal cultivation of poppy.



and the poppy so cultivated, and the opium (if any) produced therefrom, may be confiscated by the convicting Magistrate.

6. Whoever, not being authorized in this behalf under rules made and published under this Act, or before such rules are so made and published, has in his possession a greater quantity of opium than five tolahs weight,

and whoever transports opium in contravention of rules so made and published, or before such rules are so made and published,

shall for every such offence be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months:

Provided that if the opium in respect of which such offence is committed exceeds the weight of twenty sers, the fine may be increased at a rate not exceeding fifty rupees the ser for all the opium so found in excess.

On any conviction under this section, the opium, together with the vessels, packages and coverings in which it is found, and the animals and conveyances used in carrying it, may be confiscated by the convicting Magistrate.

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#### STATEMENT OF OBJECTS AND REASONS.

The poppy is grown extensively in Lower Bengal, the North-Western Provinces, Oudh and Central India, and to some slight extent in the Panjáb, the Central Provinces, Berar and Mysore, and in part of Bombay. Little or no opium is produced in Madras, British Burma or Assam.

The attention of Local Governments and of the Government of India has of late been frequently drawn to the insufficiency of the existing law on the subject.

In the Bengal Presidency, including the North-Western Provinces, Oudh and the Panjáb, the law is clear and satisfactory.

But in some of the more recently formed Administrations, such as the Central Provinces, Assam and British Burma, the applicability of the Bengal law is doubtful, and in Bombay and Madras the law on the subject is altogether defective.

In the Bombay Presidency, the same control is in point of fact exercised as in Bengal for checking the growth of the poppy and the manufacture of opium; but the legal authority for this action is insufficient.

In Madras no check, either legislative or administrative, exists at present on the growth of the poppy or the transport, possession or storage of opium, and practices have resulted injurious alike to the public revenue and to public morality and health.

The Governments of Madras and Bombay have both contemplated supplying these defects by local legislation. But it is considered expedient by one simple and comprehensive Imperial law to ensure that the Imperial revenue derived from opium is nowhere left without adequate protection.

The Bill, as now introduced, will not alter the state of things prevailing in the Bengal Presidency, nor will it involve any alteration of practice inconsistent with the system of export duty in force in Western India. The control exercised by the State in Bengal and Northern India, is equally necessary whichever system prevails. The power which Government by law possesses in the Bengal Presidency will now be extended to all parts of India,—doubts, where they exist, will be removed,—and the needed legislation will be provided for Madras and Bombay.

SIMLA,  
The 23rd August 1875.

W. MUIR.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 18, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

(Third publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 9 of 1875.

#### *A Bill to amend the law relating to Opium.*

Whereas it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Preamble.

Short title.

Local extent.

Commencement.

1. This Act may be called  
"The Indian Opium Act,  
1875."

It extends to the whole  
of British India;

And it shall come into  
force as follows:—

(a). In the Provinces respectively subject to the Governors in Council of Fort Saint George and Bombay, at once:

(b). In each of the other Provinces of British India, on such day as the Governor General in Council, by notification in the *Gazette of India*, directs in that behalf.

2. Sections eight to sixteen (both inclusive) of Bombay Regulation XXI of 1827, are hereby repealed.  
Repeal of Bombay Regulation XXI of 1827, secs. 8 to 16.

3. Unless in accordance with rules framed under this Act or with any enactment for the time being in force, no one shall—  
Prohibition of poppy cultivation and possession, &c., of opium.

- (a) cultivate the poppy or manufacture opium;
- (b) possess any quantity of opium exceeding five tolahs in weight;
- (c) transport opium from one place to another; or
- (d) sell opium or preparations or admixtures of opium.

4. The Local Government may make rules to regulate, within the whole or any part of the territories subject to such Government, all or any of the following matters:—  
Local Government may make rules.

- (a) the cultivation of the poppy;
- (b) the possession of any quantity of opium exceeding five tolahs in weight;
- (c) the transport of opium; and
- (d) the sale of opium and of preparations and admixtures of opium.

The Local Government may from time to time alter and add to such rules.

Such rules, alterations and additions shall be submitted for the sanction of the Governor General in Council, and on receiving such sanction, shall be published in the local *Official Gazette*, and shall thereupon have the force of law.

5. Whoever cultivates the poppy in contravention of rules made and published under section four, or before such rules are made and published as aforesaid, shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months;  
Penalty for illegal cultivation of poppy.

and the poppy so cultivated, and the opium (if any) produced therefrom, may be confiscated by the convicting Magistrate.

6. Whoever, not being authorized in this behalf under rules made and published under this Act, or before such rules are so made and published, has in his possession a greater quantity of opium than five tolahs weight,

and whoever transports opium in contravention of rules so made and published, or before such rules are so made and published,

shall for every such offence be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months:

Provided that if the opium in respect of which such offence is committed exceeds the weight of twenty sers, the fine may be increased at a rate not exceeding fifty rupees the ser for all the opium so found in excess.

On any conviction under this section, the opium, together with the vessels, packages and coverings in which it is found, and the animals and conveyances used in carrying it, may be confiscated by the convicting Magistrate.

7. Whoever sells opium in contravention of rules so made and published, or before such rules are so made and published; shall for every such offence be punished with fine which may extend to one thousand rupees, and, in default of payment of such fine, with imprisonment for a term which may extend to six months.

#### STATEMENT OF OBJECTS AND REASONS.

The poppy is grown extensively in Lower Bengal, the North-Western Provinces, Oudh and Central India, and to some slight extent in the Panjáb, the Central Provinces, Berar and Mysore, and in part of Bombay. Little or no opium is produced in Madras, British Burma or Assam.

The attention of Local Governments and of the Government of India has of late been frequently drawn to the insufficiency of the existing law on the subject.

In the Bengal Presidency, including the North-Western Provinces, Oudh and the Panjáb, the law is clear and satisfactory.

But in some of the more recently formed Administrations, such as the Central Provinces, Assam and British Burma, the applicability of the Bengal law is doubtful, and in Bombay and Madras the law on the subject is altogether defective.

In the Bombay Presidency, the same control is in point of fact exercised as in Bengal for checking the growth of the poppy and the manufacture of opium; but the legal authority for this action is insufficient.

In Madras no check, either legislative or administrative, exists at present on the growth of the poppy or the transport, possession or storage of opium, and practices have resulted injurious alike to the public revenue and to public morality and health.

The Governments of Madras and Bombay have both contemplated supplying these defects by local legislation. But it is considered expedient by one simple and comprehensive Imperial law to ensure that the Imperial revenue derived from opium is nowhere left without adequate protection.

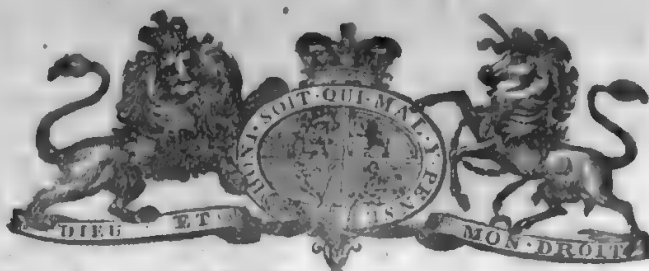
The Bill, as now introduced, will not alter the state of things prevailing in the Bengal Presidency, nor will it involve any alteration of practice inconsistent with the system of export duty in force in Western India. The control exercised by the State in Bengal and Northern India, is equally necessary whichever system prevails. The power which Government by law possesses in the Bengal Presidency will now be extended to all parts of India,—doubts, where they exist, will be removed,—and the needed legislation will be provided for Madras and Bombay.

SIMLA,

The 23rd August 1875.

W. MUIR.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 2, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th September 1875, and was referred to a Select Committee with instructions to make their report thereon in a week.

No. 10 of 1875.

*A Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb, and for other purposes.*

Whereas it is expedient to give a right of appeal from certain decrees and orders of the Chief Court of the Panjáb, and to enable the appellate Court to remand suits and order retrials, and to empower Judges of the said Chief Court to make references as to points of law; It is hereby enacted as follows:—

1. Subject to the provisions hereinafter contained, an appeal shall lie in exercise of original jurisdiction from any decree or order (not being an order made in any criminal trial) made in the exercise of original jurisdiction either by one Judge of the said Chief Court, or by a Bench of two Judges of the same Court, unless such Judges concur in the judgment.

When a suit is heard by a Bench of two Judges exercising original jurisdiction, the judgment of the senior Judge shall be the judgment of the Bench, and the decree or order shall follow thereupon, and any appeal therefrom shall be heard by a full Bench.

If the decree or order appealed from was made by a single Judge, the appeal shall be heard either by the two other Judges of the said Chief Court or by a full Bench, as the Court may determine, either by rule made under Act No. 1V of 1866, section 43, or, in the absence of such rule, by order in the particular case.

When the appeal is heard by two Judges, and they do not concur in varying the decree or order appealed from, such decree or order shall be taken as the final decree or order of the said Chief Court, unless such Court orders (as it is hereby empowered to do) the appeal to be re-heard before the full Bench.

2. Every appeal under this Act must be presented within thirty days from the date of the decree or order appealed against.

But if the period of limitation so prescribed expires on a day when the Court is closed, the appeal may be presented on the day that the Court re-opens.

3. Any such appeal may be admitted after the period of limitation so prescribed when the appellant satisfies the Court that he had sufficient cause for not presenting it within such period; and in the case of any decree against which the Chief Court has declared an appeal to Her Majesty in Council to be admitted under Act No. VI of 1874, the non-existence of this Act shall be deemed to be sufficient cause within the meaning of this section: provided that the copy of the record has not been transmitted to Her Majesty in Council.

4. In computing such period, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.



5. When an appeal under this Act has been heard, the appellate Court may remand the suit in accordance either with section 371 or section 374 of the Code of Civil Procedure, or may order that the case be tried again either by a full Bench or by the Court that has already tried it.

6. A single Judge, or a Bench of two Judges (whether exercising original or appellate jurisdiction), may refer for the decision of a full Bench any question of law arising in any suit or on any appeal before such Judge or Bench of two Judges; and the Judge or Bench making the reference shall dispose of the case conformably to the decision of the full Bench of the question so referred.

7. In case of a difference of opinion among the Judges forming the full Bench as to the decision to be given on any question coming before them under any provision of this Act, such question shall be decided according to the opinion of the majority of such Judges.

8. This Act shall be read with, and taken as part of, the Panjáb Chief Court Act, 1866.

#### STATEMENT OF OBJECTS AND REASONS.

The Act regulating the Chief Court of the Panjáb (IV of 1866) provides no appeal from decrees made by a single Judge of the Court in the exercise of original civil jurisdiction.

The result is that appeals from such decrees can only go to the Judicial Committee of the Privy Council: and much waste of time and money is thereby caused.

The present Bill, which has been prepared at the desire of the Local Government and the Chief Court, is intended to supply the defect above indicated. The opportunity has been taken to enable the appellate Court to remand suits and order retrials, and to empower the Judges to make references as to questions of law.

SIMLA; }  
The 8th September 1875. } A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 11 of 1875.

A Bill to amend the law relating to Merchant Seamen.

Whereas it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows:—

#### Preliminary.

1. This Act may be called "The Indian Merchant Seamen's Act, 1875:—"  
Short title.

#### Local extent.

It extends to the whole of British India;

#### Commencement.

And it shall come into force at once.

2. In this Act—"owner" includes also "agent," and "seaman"

Interpretation-clause. includes every person (except Masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.

#### Distressed Seamen.

3. A certificate signed by a Secretary to the Local Government, or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212, and 213 of the Merchant Shipping Act, 1854, be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any Master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

#### Discharge of Seamen.

4. No owner or Master of a ship shall discharge any seaman or apprentice not shipped in British India without the previous sanction in writing of such officer as the Local Government appoints in this behalf, and such sanction shall be given or withheld at the discretion of the officer so appointed.

Any Master wilfully disobeying the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

#### Engagement of Seamen.

5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit the owner or Master of any ship from engaging any Native of India to serve as a seaman on board such ship.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

#### Deserters.

6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the Master or owner of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.

Any Master or owner wilfully neglecting to comply with the provisions of this section may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both,

*Imprisoned Seamen.*

7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the Master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed:—

(a) Such Master or owner shall not, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board his ship;

(b) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the Master or owner of the ship in which he is engaged to serve, and if such Master or owner refuse to receive him or board, may require such Master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice, and his money, clothes, and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of—

the passage of the said seaman or apprentice to the port at which he was shipped, and of his subsistence during such passage;

his lodging and subsistence during his detention (if any) at the place at which he is so imprisoned until he embarks.

And if the Master or owner fail to deposit such wages, money, clothes and other effects, or refuse or neglect to comply with such requisition, he may be punished with fine not exceeding five hundred rupees, and in default of payment of such fine, to imprisonment for a term which may extend to three months.

*Accommodation of Seamen.*

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen and apprentices and for lascars or Native seamen; it is hereby further enacted as follows:—

Such section shall be read as if for the expressions "nine superficial feet," "fifty-four cubic feet," and "four superficial feet," the expressions "ten superficial feet," "sixty cubic feet," and "six superficial feet" were respectively substituted, and as if in the third paragraph of the same section after the word "superficial" the words "and thirty-six cubic" were inserted.

*Meaning of 'established par value.'*

10. And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No. I of 1859, section 54, for the purpose of

removing such doubts, it is hereby declared as follows:—

In the said section 54, the expression "established par value" means the rate of exchange for the time being fixed by the Secretary of State for India in Council to regulate transactions between himself and the Government of India.

*STATEMENT OF OBJECTS AND REASONS.*

The object of this Bill is to make a number of small but important changes in the law relating to Merchant Seamen, which cannot conveniently be postponed until that law is consolidated and amended.

The Bill first provides for determining disputes whether or not a seaman is "distressed" within the meaning of the sections of the Merchant Shipping Act, 1854, relating to distressed seamen, and imposes an Indian penalty on masters of British ships who refuse to receive on board distressed seamen in accordance with those sections.

The Bill then provides against the discharge in India of European seamen without the previous sanction of an officer appointed by the Local Government, and removes a doubt which has been felt as to the corresponding provision (section 207) of the Merchant Shipping Act, 1854, by expressly declaring that such officer has a discretion as to giving or withholding his sanction.

Power is given to the Local Government to prohibit the owner or master of a ship from engaging Natives of India as seamen. This power is intended to be exercised in case it is found that the master is wantonly discharging European seamen for the mere purpose of replacing them by Natives.

Provision is then made that where a European seaman deserts, the master or owner shall report the desertion to the Local Government.

Sections 7 and 8 extend the provisions of section 88 of Act I of 1859, and contain certain rules as to European seamen imprisoned for breaches of discipline or other petty offences on the complaint of the master. The previous sanction of the Local Government is rendered necessary to the engagement of Natives of India. The Local Government is also empowered to tender an imprisoned seaman to the master, and, if the master refuse to receive him, the master may be required to deposit, not only the wages, &c., due to the seaman, but also such sum as may be sufficient to defray the cost of his passage home and of his lodging and subsistence till he starts.

The Bill then contains a clause slightly increasing the space required by Act I of 1859, section 70, for European and for Native seamen.

Lastly, a clause has been added to remove a doubt which has been raised as to the meaning, in section 54 of that Act, of the expression "established par value."

SIMLA,

The 25th September 1875.

A. HOBHOUSE.

WHITLEY STOKES,

Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 9, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[ Second publication. ]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th September 1875, and was referred to a Select Committee with instructions to make their report thereon in a week.

No. 10 of 1875.

*A Bill to provide an appeal from certain decrees of the Chief Court of the Panjáb, and for other purposes.*

Whereas it is expedient to give a right of appeal from certain decrees and orders of the Chief Court of the Panjáb, and to enable the appellate Court to remand suits and order retrials, and to empower Judges of the said Chief Court to make references as to points of law; It is hereby enacted as follows:—

1. Subject to the provisions hereinafter contained, an appeal shall lie in exercise of original jurisdiction to the said Chief Court from any decree or order (not being an order made in any criminal trial) made in the exercise of original jurisdiction either by one Judge of the said Chief Court, or by a Bench of two Judges of the same Court, unless such Judges concur in the judgment.

When a suit is heard by a Bench of two Judges exercising original jurisdiction, the judgment of the senior Judge shall be the judgment of the Bench, and the decree or order shall follow thereupon, and any appeal therefrom shall be heard by a full Bench.

If the decree or order appealed from was made by a single Judge, the appeal shall be heard either by the two other Judges of the said Chief Court or by a full Bench, as the Court may determine, either by rule made under Act No. IV of 1866, section 43, or, in the absence of such rule, by order in the particular case.

When the appeal is heard by two Judges, and they do not concur in varying the decree or order appealed from, such decree or order shall be taken as the final decree or order of the said Chief Court, unless such Court orders (as it is hereby empowered to do) the appeal to be re-heard before the full Bench.

2. Every appeal under this Act must be presented within thirty days from the date of the decree or order appealed against.

But if the period of limitation so prescribed expires on a day when the Court is closed, the appeal may be presented on the day that the Court re-opens.

3. Any such appeal may be admitted after the period of limitation so prescribed when the appellant satisfies the Court that he had sufficient cause for not presenting it within such period; and in the case of any decree against which the Chief Court has declared an appeal to Her Majesty in Council to be admitted under Act No. VI of 1874, the non-existence of this Act shall be deemed to be sufficient cause within the meaning of this section: provided that the copy of the record has not been transmitted to Her Majesty in Council.

4. In computing such period, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

5. When an appeal under this Act has been heard, the appellate Court may remand the suit in accordance either with section 371 or section 374 of the Code of Civil Procedure, or may order that the case be tried again either by a full Bench or by the Court that has already tried it.

6. A single Judge, or a Bench of two Judges (whether exercising original or appellate jurisdiction), may refer for the decision of a full Bench any question of law arising in any suit or on any appeal before such Judge or Bench of two Judges; and the Judge or Bench making the reference shall dispose of the case conformably to the decision of the full Bench of the question so referred.

7. In case of a difference of opinion among the Judges forming the full Bench as to the decision to be given on any question coming before them under any provision of this Act, such question shall be decided according to the opinion of the majority of such Judges.

8. This Act shall be read with, and taken as part of, the Panjáb Chief Court Act, 1866.

#### STATEMENT OF OBJECTS AND REASONS.

The Act regulating the Chief Court of the Panjáb (IV of 1866) provides no appeal from decrees made by a single Judge of the Court in the exercise of original civil jurisdiction.

The result is that appeals from such decrees can only go to the Judicial Committee of the Privy Council: and much waste of time and money is thereby caused.

The present Bill, which has been prepared at the desire of the Local Government and the Chief Court, is intended to supply the defect above indicated. The opportunity has been taken to enable the appellate Court to remand suits and order retrials, and to empower the Judges to make references as to questions of law.

SIMLA;  
The 8th September 1875. } A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 11 of 1875.

A Bill to amend the law relating to Merchant Seamen.

Whereas it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows:—

#### Preliminary.

1. This Act may be called "The Indian Merchant Seamen's Act, 1875."

It extends to the whole of British India;

And it shall come into force at once.

2. In this Act—"owner" includes also "agent," and "seaman" includes every person (except Masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.

#### Distressed Seamen.

3. A certificate signed by a Secretary to the Local Government, or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212, and 213 of the Merchant Shipping Act, 1854, be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any Master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

#### Discharge of Seamen.

4. No owner or Master of a ship shall discharge any seaman or apprentice not shipped in British India without the previous sanction in writing of such officer as the Local Government appoints in this behalf, and such sanction shall be given or withheld at the discretion of the officer so appointed.

Any Master wilfully disobeying the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

#### Engagement of Seamen.

5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit the owner or Master of any ship from engaging any Native of India to serve as a seaman on board such ship.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

#### Deserters.

6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the Master or owner of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.



Any Master or owner wilfully neglecting to comply with the provisions of this section may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both.

#### *Imprisoned Seamen.*

7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the Master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed:—

(a) Such Master or owner shall not, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board his ship;

(b) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the Master or owner of the ship in which he is engaged to serve, and if such Master or owner refuse to receive him on board, may require such Master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice, and his money, clothes, and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of—

the passage of the said seaman or apprentice to the port at which he was shipped, and of his subsistence during such passage;

his lodging and subsistence during his detention (if any) at the place at which he is so imprisoned until he embarks.

And if the Master or owner fail to deposit such wages, money, clothes and other effects, or refuse or neglect to comply with such requisition, he may be punished with fine not exceeding five hundred rupees, and in default of payment of such fine, to imprisonment for a term which may extend to three months.

#### *Accommodation of Seamen.*

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen and apprentices and for lascars or Native seamen; It is hereby further enacted as follows:—

Such section shall be read as if for the expressions "nine superficial feet," "fifty-four cubic feet,"

and "four superficial feet," the expressions "ten superficial feet," "sixty cubic feet," and "six superficial feet" were respectively substituted, and as if in the third paragraph of the same section after the word "superficial" the words "and thirty-six cubic" were inserted.

#### *Meaning of 'established par value.'*

10. And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No. I of 1859, section 54, for the purpose of removing such doubts; It is hereby declared as follows:—

In the said section 54, the expression "established par value" means the rate of exchange for the time being fixed by the Secretary of State for India in Council to regulate transactions between himself and the Government of India.

#### *STATEMENT OF OBJECTS AND REASONS.*

The object of this Bill is to make a number of small but important changes in the law relating to Merchant Seamen, which cannot conveniently be postponed until that law is consolidated and amended.

The Bill first provides for determining disputes whether or not a seaman is "distressed" within the meaning of the sections of the Merchant Shipping Act, 1854, relating to distressed seamen, and imposes an Indian penalty on Masters of British ships who refuse to receive on board distressed seamen in accordance with those sections.

The Bill then provides against the discharge in India of European seamen without the previous sanction of an officer appointed by the Local Government, and removes a doubt which has been felt as to the corresponding provision (section 207) of the Merchant Shipping Act, 1854, by expressly declaring that such officer has a discretion as to giving or withholding his sanction.

Power is given to the Local Government to prohibit the owner or Master of a ship from engaging Natives of India as seamen. This power is intended to be exercised in case it is found that the Master is wantonly discharging European seamen for the mere purpose of replacing them by Natives.

Provision is then made that where a European seaman deserts, the Master or owner shall report the desertion to the Local Government.

Sections 7 and 8 extend the provisions of section 88 of Act I of 1859, and contain certain rules as to European seamen imprisoned for breaches of discipline or other petty offences on the complaint of the Master. The previous sanction of the Local Government is rendered necessary to the engagement of Natives of India. The Local Government is also empowered to tender an imprisoned seaman to the Master, and, if the Master refuse to receive him, the Master may be required to deposit, not only the wages, &c., due to the seaman, but also such sum as may be

sufficient to defray the cost of his passage home and of his lodging and subsistence till he starts.

The Bill then contains a clause slightly increasing the space required by Act I of 1859, section 70, for European and for Native seamen.

Lastly, a clause has been added to remove a doubt which has been raised as to the meaning,

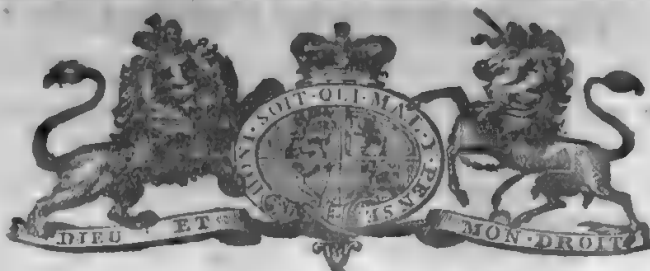
in section 54 of that Act, of the expression "established par value."

SIMLA;  
The 25th September 1875. }

A. HOBHOUSE

WHITLEY STOKES,

*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 16, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

(Third publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 29th September 1875, and was referred to a Select Committee with instructions to make their report thereon in three months.

No. 11 of 1875.

#### *A Bill to amend the law relating to Merchant Seamen.*

Whereas it is expedient to amend the law relating to Merchant Seamen in manner hereinafter appearing; It is hereby enacted as follows:—

##### *Preliminary.*

1. This Act may be called "The Indian Merchant Seamen's Act, 1875."

Short title. It extends to the whole of British India;

Local extent. And it shall come into force at once.

Commencement. 2. In this Act—"owner" includes also "agent," and "seaman" includes every person (except Masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship.

##### *Distressed Seamen.*

3. A certificate signed by a Secretary to the Local Government, or by such other officer as it appoints in this behalf, to the effect that any seaman named therein is distressed, shall, in all proceedings under sections 211, 212, and 213 of the Merchant Shipping

Act, 1854, be conclusive evidence that such seaman is distressed within the meaning of the same sections; and any Master of a British ship refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

Penalty for refusing to accept such seaman as a distressed seaman under the provisions of the said sections shall, for each seaman with respect to whom he so refuses, be liable to a fine which may extend to one thousand rupees.

##### *Discharge of Seamen.*

4. No owner or Master of a ship shall discharge any seaman or apprentice not shipped in British India without the previous sanction in writing of such officer as the Local Government appoints in this behalf, and such sanction shall be given or withheld at the discretion of the officer so appointed.

Any Master wilfully disobeying the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

##### *Engagement of Seamen.*

5. The Local Government, or such officer as it appoints in this behalf, may, by order in writing signed by its Secretary or by such officer, prohibit the owner or Master of any ship from engaging any Native of India to serve as a seaman on board such ship.

Whoever wilfully disobeys the prohibition contained in this section shall be liable to imprisonment for a term which may extend to three months, or to fine not exceeding one thousand rupees, or to both.

##### *Deserters.*

6. Whenever any seaman or apprentice not shipped in British India deserts or otherwise absents himself without leave from any ship in which he is engaged to serve, the Master

or owner of the ship shall, within forty-eight hours of discovering such desertion or absence, report the same to such officer as the Local Government appoints in this behalf, unless in the meantime the deserter or absentee returns.

Any Master or owner wilfully neglecting to comply with the provisions of this section may be punished with fine not exceeding one hundred rupees, or imprisonment for a term which may extend to one month, or with both.

#### *Imprisoned Seamen.*

7. If any seaman or apprentice not shipped in British India is imprisoned for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, any Magistrate may deal with him in the same way as he may deal with a seaman or apprentice imprisoned on any of the grounds mentioned in section 88 of Act No. I of 1859 (for the amendment of the law relating to Merchant Seamen).

8. If any seaman or apprentice not shipped in British India is imprisoned on a complaint made by or on behalf of the Master or owner of the ship in which he is engaged to serve, on any of the grounds mentioned in the said Act No. I of 1859, section 88, or for any offence for which he has been sentenced to imprisonment for a term not exceeding one month, the following rules shall be observed:—

(a) Such Master or owner shall not, without the previous sanction in writing of the Local Government or of such officer as it appoints in this behalf, engage any Native of India to serve as a seaman on board his ship;

(b) the Local Government, or such officer as it appoints in this behalf, may tender such seaman or apprentice to the Master or owner of the ship in which he is engaged to serve, and if such Master or owner refuse to receive him on board, may require such Master or owner to deposit in the local Shipping Office (1) the wages due to such seaman or apprentice, and his money, clothes, and other effects, and (2) such sum as may in the opinion of the Local Government or of such officer as aforesaid be sufficient to defray the cost of—

the passage of the said seaman or apprentice to the port at which he was shipped, and of his subsistence during such passage;

his lodging and subsistence during his detention (if any) at the place at which he is so imprisoned until he embarks.

And if the Master or owner fail to deposit such wages, money, clothes and other effects, or refuse or neglect to comply with such requisition, he may be punished with fine not exceeding five hundred rupees, and in default of payment of such fine, to imprisonment for a term which may extend to three months.

#### *Accommodation of Seamen.*

9. And whereas it is expedient to increase the space required by the said Act No. I of 1859, section 70, to be allowed for European seamen

and apprentices and for lascars or Native seamen; It is hereby further enacted as follows:—

Such section shall be read as if for the expressions "nine superficial feet," "fifty-four cubic feet," and "four superficial feet," the expressions "ten superficial feet," "sixty cubic feet," and "six superficial feet" were respectively substituted, and as if in the third paragraph of the same section after the word "superficial" the words "and thirty-six cubic" were inserted.

#### *Meaning of 'established par value.'*

10. And whereas doubts have been raised as to the meaning of the expression "established par value" in the said Act No. I of 1859, section 54, for the purpose of removing such doubts; It is hereby declared as follows:—

In the said section 54, the expression "established par value" means the rate of exchange for the time being fixed by the Secretary of State for India in Council to regulate transactions between himself and the Government of India.

#### *STATEMENT OF OBJECTS AND REASONS.*

The object of this Bill is to make a number of small but important changes in the law relating to Merchant Seamen, which cannot conveniently be postponed until that law is consolidated and amended.

The Bill first provides for determining disputes whether or not a seaman is "distressed" within the meaning of the sections of the Merchant Shipping Act, 1854, relating to distressed seamen, and imposes an Indian penalty on Masters of British ships who refuse to receive on board distressed seamen in accordance with those sections.

The Bill then provides against the discharge in India of European seamen without the previous sanction of an officer appointed by the Local Government, and removes a doubt which has been felt as to the corresponding provision (section 207) of the Merchant Shipping Act, 1854, by expressly declaring that such officer has a discretion as to giving or withholding his sanction.

Power is given to the Local Government to prohibit the owner or Master of a ship from engaging Natives of India as seamen. This power is intended to be exercised in case it is found that the Master is wantonly discharging European seamen for the mere purpose of replacing them by Natives.

Provision is then made that where a European seaman deserts, the Master or owner shall report the desertion to the Local Government.

Sections 7 and 8 extend the provisions of section 88 of Act I of 1859, and contain certain rules as to European seamen imprisoned for breaches of discipline or other petty offences on the complaint of the Master. The previous sanction of the Local Government is rendered necessary to the engagement of Natives of India



The Local Government is also empowered to tender an imprisoned seaman to the Master, and, if the Master refuse to receive him, the Master may be required to deposit, not only the wages, &c., due to the seaman, but also such sum as may be sufficient to defray the cost of his passage home and of his lodging and subsistence till he starts.

The Bill then contains a clause slightly increasing the space required by Act I of 1859, section 70, for European and for Native seamen.

Lastly, a clause has been added to remove a doubt which has been raised as to the meaning, in section 54 of that Act, of the expression "established per value."

SIMLA;  
The 25th September 1875. } A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.

(First publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th October 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 12 of 1875.

*A Bill for the repeal of certain obsolete enactments.*

Whereas it is expedient that the enactments mentioned in the schedule to this Act, which have ceased to be in force otherwise than by express

and specific repeal, or have by lapse of time and change of circumstances become unnecessary, or which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:—

1. The enactments described in the schedule annexed to this Act are hereby repealed to the extent mentioned in the third column of the same schedule:

Provided that the repeal by this Act of any enactment shall not affect any Statute, Act or Regulation in which such enactment has been applied, incorporated, or referred to:

And this Act shall not affect the validity or invalidity of anything already done or suffered, or any indemnity already granted, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, or the proof of any past act or thing:

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived, by, in, or from any enactment hereby repealed:

Nor shall this Act provide or restore any jurisdiction, office, custom, privilege, restriction, exemption, usage or practice not now existing or in force.

2. This Act may be cited as "The Repealing Act, 1875": it extends to the whole of British India; and it shall come into force at once.

Short title.

Local extent.

Commencement.

## SCHEDULE.

*A description or citation of a portion of an Act or Regulation is inclusive of the words, section or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.*

## PART I.

*Acts of the Governor General in Council.*

Number and year.	Subject.	Extent of repeal.
IX of 1835 ...	Salt, Bengal ...	The whole.
XIX of 1836 ...	Coasting Vessels, Bombay	Section nine. In section twelve, the word "Indian." In section thirteen, the words "Justice of the Peace or person exercising the powers of a Magistrate."
XXIX of 1838 ...	Salt, Bengal ...	So much as has not been repealed.
VI of 1840 ...	Bills of Exchange ...	In section five, the words "after the passing of this Act."
XVIII of 1841 ...	Arms and Ammunition ...	Section two.
XIX of 1841 ...	Wrongful possession in case of succession.	In sections nine and eighteen, the word "that" where it occurs before the word "all", and the word "for."
I of 1846 ...	Pleaders ...	In sections seven and nine, the word "that" where it occurs before the word "it", and the word "persons."
VIII of 1846 ...	Settlement, N. W. Provinces	So much as has not been repealed.
XX of 1847 ...	Copyright ...	In section seven, the words "after the passing of this Act" and "in such part of the said territories"; and from "if he shall have so offended" down to "charter"; and from "to a special" to "no Zillah Court." In section thirteen, the word "that" where it occurs before the words "if the case."
XV of 1848 ...	Supreme Court Officers ...	In section four, the words "or the East India Company."
IX of 1850 ...	Presidency Small Cause Courts.	Sections three, forty-seven and ninety. In section one, the last thirty-seven words. In section eight, the words "not exceeding three." In section one hundred and one, the words "after the passing of this Act."
XXVI of 1850 ...	Improvements in Towns ...	So much as has not been repealed.
XXXVII of 1850 ...	Public Servants ...	Section seventeen.
VIII of 1851 ...	Tolls on Roads and Bridges	In section six, the words "of the zillah."
XVII of 1852 ...	Special Cases, Supreme Court.	Section twenty-six, from "which according" to "referred, but." Section thirty. In section thirty-two, the words "and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca." Section thirty-three.

*Acts of the Governor General in Council,—continued.*

Number and year.	Subject.	Extent of repeal.
XXI of 1852 ...	Deputy Collectors, Bombay	In section one, the words "zillah or."
XXX of 1852 ...	Naturalization ...	The last sixteen words of the schedule.
XVIII of 1854 ...	Railways ...	In section thirty-four, the words "or by any Assistant to a Magistrate or Deputy Magistrate". In section thirty-five, the words "and district or Joint Police officers in the Presidency of Bombay." In section forty, the words "within the said territories".
XXXI of 1854 ...	Real Actions, Conveyances	In section thirteen, the words "in the possession and".
VI of 1855 ...	Execution, Supreme Courts	Section fourteen, from "and the term" to the end.
XXIV of 1855 ...	Penal Servitude ...	In section one, the words "in the possession and".
VIII of 1856 ...	Gaols, Madras and Bombay	In section two, the first eight words.
II of 1857 ...	Calcutta University ...	In the preamble, the last four words. Section four, from "and the first" to the end. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and "the Vice-Chancellor hereinbefore nominated or".
IV of 1857 ...	Tobacco, Bombay Town ...	In section five, the words "after the passing of this Act," and from "and the provisions" to the end of that section.
XI of 1857 ...	Offences against the State..	In section three, clause 1, the words "within the said territories", "of the crimes mentioned in the preceding sections, or any other". In section four, the words "without the attendance or futwa of a Law Officer,". Sections seven, eight, nine and ten. In section eleven, the words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate".
XXII of 1857 ...	Bombay University ...	In the preamble, the last four words. In section four, the last twelve words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXVII of 1857 ...	Madras University ...	In the preamble, the last four words. In section four, the last fourteen words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXIX of 1857 ...	Land Customs, Bombay ...	In section eleven, the words "by the said schedules". In section thirteen, the words "entered in either of the said schedules as".
III of 1858 ...	State Prisoners ...	Section four.

*Acts of the Governor General in Council—continued.*

Number and year.	Subject.	Extent of repeal.
I of 1859 ...	Merchant Seamen ...	In section sixty-three, the words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the Court of Judicature there". In section sixty-seven, the words "and in the Straits Settlement in such manner as the Governor shall notify".
III of 1859 ...	Cantonment Joint Magistrates	In the title, the words "and for constituting those Officers Registers of Deeds". In the preamble, the words "and that they should also be appointed Registers of Deeds within the same limits".
XV of 1859 ...	Patents ...	Sections thirteen and thirty-six.
XXXI of 1861 ...	Saltpetre ...	So much as has not been repealed.
XIII of 1863 ...	Imprisonment of Convicts, Bombay.	The whole.
XIV of 1863 ...	Amending Act X of 1859	So much as has not been repealed.
III of 1864 ...	Foreigners ...	In section twenty-four, the words "and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca".
XVII of 1864 ...	Official Trustee ...	In section three, the words "the said".
XXII of 1864 ...	Cantonments ...	In section eight, the words "and for constituting those Officers Registrars of Deeds".
XI of 1865 ...	Mofussil Small Cause Courts	In section twelve, the words "and for constituting those Officers Registers of Deeds".
XV of 1865 ...	Parsee Marriage and Divorce	Section fifty-three.
XXIX of 1865 ...	Pleadings ...	Sections one, two and three.
XII of 1866 ...	Private Water-courses ...	The whole.
XIV of 1866 ...	Post Office ...	Section fifty-five, and in section fifty-six the words "or by any Assistant to a Magistrate or Deputy Magistrate".
XXV of 1866 ...	Transfer of securities to Government.	The preamble from "And whereas" to "purposes aforesaid".
VII of 1867 ...	Purchases from Soldiers ...	In section one, first eight words.
XIII of 1867 ...	Port dues : Coast lights ...	Section two.
XIV of 1869 ...	Bombay Civil Courts ...	The second paragraph of section five. The second paragraph of section fourteen. Sections thirty and thirty-one.
XXII of 1870 ...	European British Subjects	Section one.
XXIII of 1870 ...	Coinage ...	Section eighteen, paragraph one.
XXVII of 1871 ...	Criminal tribes ...	Section twenty-three.
III of 1872 ...	Marriage ...	Section twenty and the fourth schedule.



*Acts of the Governor General in Council—concluded.*

Number and year.	Subject.	Extent of repeal.
X of 1872 ...	Criminal Procedure Code...	Section three.
XXI of 1872 ...	Sepoy Lunatics ...	Section six.
X of 1873 ...	Oaths ...	In section one, the third paragraph.
XVI of 1873 ...	Village Police, N.W. Provinces	In section one, the third paragraph.
III of 1874 ...	Married Women ...	Section three.
IV of 1874 ...	Foreign Recruiting ...	In section one, the third clause.
V of 1874 ...	Kullu Appeals ...	Sections one and four.
XV of 1874 ...	Laws Local Extent ...	Section nine and the seventh schedule. So much of the second schedule as relates to Madras Regulations III of 1831 and VII of 1832, and to section four of Madras Regulation IV of 1821, and to Act No. VIII of 1856.
XVI of 1874 ...	Repealing Act, 1874 ...	The whole.
III of 1875 ...	Amending Repealing Act, 1874.	The whole.
IV of 1875 ...	Merchant Shipping ...	Section two, and the third clause of section one.
VII of 1875 ...	Burma Fisheries ...	In section one, clause three.
VIII of 1875 ...	Inland Customs ...	Section two and the schedule.
X of 1875 ...	High Courts' Criminal Procedure	Sections thirty-nine and one-hundred-and-fifty-three.
XVI of 1875 ...	Tariff ...	Section two.

## PART II.

*Regulations of the Bengal Code.*

Number and year.	Subject.	Extent of repeal.
XII of 1817 ...	Patwáris ...	In section eight, the words "the Board of Commissioners, or the Commissioner in Behar and Benares, as the case may be," and "or Commissioner".  In sections thirteen, fifteen, and sixteen, the words "the Board of Commissioners, or the Commissioner in Behar and Benares".  In section seventeen, the words "Board of Commissioners, or Commissioner in Behar and Benares".

## PART III.

*Regulations of the Madras Code.*

Number and year.	Subject.	Extent of repeal.
III of 1802 ...	Procedure of Civil Courts...	In section eleven, the words "Zillah" "of the Zillah" wherever they occur, and "by the Provincial Courts of Appeal, or the Sudder Adawlut." In section sixteen, clause <i>Second</i> , the words "Hindoo" "the judge of the Court of Adawlut" and "other," and the words and figures "under the general rule contained in section v., Regulation II., 1802, and proceed thereupon according to the regulations." In clause <i>Third</i> , the words "when they are to proceed thereupon according to the general regulations."
XIII of 1802 ...	Records of Courts ...	In section fifteen, the words and figures "in the same manner as is prescribed to the Provincial Courts of Appeal in section XII."
XXIX of 1802 ...	Karnams ...	Section four. In sections eighteen and nineteen, the words "before the Court of Circuit."
IX of 1803 ...	Customs Officer, Madras ...	In section fifty-five, the words "contrary to, or not warranted by, this Regulation." In section fifty-six, the words "conformable to the provisions contained in this Regulation." In section fifty-nine, the words "the register to" in each of the places where they occur. In section sixty-three, the words "contrary to, or not warranted by, this Regulation," and "in conformity to this Regulation." In section sixty-six, the words "to the Provincial Court of Appeal for the centre division, and from the decrees of that Court." In section sixty-seven, the words "the register of" "register of the" and "the registers of."
V of 1804 ...	Court of Wards ...	In section six, clause <i>Third</i> , the words "Courts of Appeal or to the" and "as it shall seem fit." In section twenty-four, clause <i>Second</i> , from "and it shall" to the end of that clause.
I of 1805 ...	Salt ...	In section eight, clause <i>First</i> , the words "After the date of the Regulation." In clause <i>Second</i> , the words "commercial residents." In section fourteen, clauses <i>First</i> , <i>Second</i> , and <i>Fourth</i> , the words "commercial residents" "by commercial residents." In section fifteen, the words "commercial residents." In section sixteen, the words "commercial resident" and "commercial residents." Section twenty-two.
VII of 1808 ...	Martial Law ...	In the preamble, the words and figures "from the 1st day of October, 1808." Section four, from "or before any special court" to the end of that section.

*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
IV of 1816 ...	Village Munsifs ...	Section four, clause <i>First</i> . In sections five and twenty-seven, the word "Arcot." In section sixteen, clause <i>Fifth</i> , the second sentence. Sections thirty-two and thirty-four.
V of 1816 ...	Village Pancháyats ...	In section three, clause <i>Second</i> , and in section four, clauses <i>Ninth</i> and <i>Tenth</i> , and in section sixteen, clause <i>First</i> , the word "Arcot." In section ten, the words "and no stamp paper need be used in plaint, answer, or any process." In section eleven, clause <i>First</i> , the words "upon stamp paper of the prescribed rate according to the amount of the suit." In clause <i>Fourth</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." Section fifteen. In section seventeen, the words "on stamped paper of the prescribed rate, according to the amount decreed."
XI of 1816 ...	Heads of Villages, &c. ...	In section forty-seven, the words and figures "as directed in section X, Regulation III., 1810."
XII of 1816 ...	References to Village and District Pancháyats ...	In section three, the words and figures "under the same provisions as are prescribed by clauses <i>Second</i> and <i>Third</i> , section XIV, Regulation VI., 1816." In section five, clause <i>Fourth</i> , and in section nine, clause <i>Third</i> , the word "Arcot." Section six, clause <i>First</i> , so far as it relates to Regulation VII., 1816. In section six, clause <i>Second</i> , the words and figures "without requiring the agreement specified in clause <i>Second</i> , section IV., Regulation VII., 1816." In section nine, clause <i>First</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." In section eleven, the words "exempt from all stamp-duties, and shall be" and the words and figures "or to such charges as are specified in Regulation VII., 1816, if decided by a district Panchayat."
XIV of 1816 ...	Pleaders ...	In the preamble, the words "and to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of vakeels or native pleaders in the Zillah Courts and in the Provincial Courts." In section three, clause <i>First</i> , the words "and the several Provincial Courts" "in their respective courts" "being natives of India of the Hindoo or Mahomedan persuasion, and" "for the approbation of the Provincial Court of the division," "being a native of India and otherwise," and clause <i>Second</i> from "and shall communicate" to the end of that section. In section four, the words "the Provincial Courts" and "which is not required to be written on stamped paper." In section eight, the words "and the Provincial Court, on consideration of the judge's report." In section ten, clause <i>First</i> , the words "and the several Provincial Courts."

*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
		<p>In clause <i>Second</i>, the words "a register or" and "report the circumstances of the case, together with his own opinion upon it, to the Provincial Court, who will."</p> <p>In section eleven, the words "without the previous sanction of the Provincial Court," and from and including the words "but in such" to the end of the section.</p> <p>In section thirteen, the words "on unstamped paper."</p> <p>In section fourteen, the word "Arcot" wherever it occurs.</p> <p>In section fifteen, clause <i>Second</i>, the words "or registers" and "either by a deduction from the fees which may become due to the offender, or."</p> <p>In section eighteen, clause <i>First</i>, the word "register."</p> <p>In clause <i>Third</i>, the words "Provincial Courts or to the" the second sentence, and the words "Provincial Courts and of the."</p> <p>In section twenty, the words "of the Provincial Courts," and "under the provisions contained in the following clauses of this section."</p> <p>In section twenty-five, clause <i>First</i>, the words "the Provincial Courts" and the word "Arcot" wherever it occurs.</p> <p>In clause <i>Third</i>, the words and figures "written on the stamped paper prescribed in section XI, Regulation XIII., 1816."</p> <p>In section thirty-six, the words "on unstamped paper."</p> <p>In section thirty-nine, the words "or district" and the figures "VI" and "VII."</p> <p>In the Appendix No. 1, the words "or in the Provincial Court for the division of."</p> <p>In the Appendix No. 2, the words "or the Provincial Court for the division of."</p>
VIII of 1817 ...	Estates of Native Soldiers	The Appendix, except No. 5.
I of 1819 ...	Settlement of Land-revenue	<p>In the preamble, the last eleven words.</p> <p>In section two, the words and figures "Section IX., Regulation XXVI., 1802, is hereby rescinded; and."</p> <p>In section four, the words "from and after the promulgation of this regulation."</p>
II of 1819 ...	State Prisoners	<p>In the preamble, the last nine words.</p> <p>Section eight.</p> <p>In section nine, the words "to the Provincial Court of Appeal and Circuit."</p>
IV of 1821 ...	Petty Thefts	In section six, clause <i>First</i> , the word "Madras."
IX of 1822 ...	Embezzlement by Public Servants	<p>In the preamble, the last ten words.</p> <p>In section three, clause <i>Third</i>, the words and figures "in the manner prescribed in Section VII., Regulation III of 1802."</p> <p>In section four, the second sentence.</p> <p>In section five, clause <i>Fourth</i>, the word "Arcot."</p> <p>In section eight, the words "before the criminal judge (who is hereby empowered to take cognizance of such cases)" and "by him."</p> <p>In section nine, the words "on oath."</p> <p>Section ten, from the words "and the rules" to the end of the section.</p> <p>Sections seventeen and eighteen.</p>



*Regulations of the Madras Code,—concluded.*

Number and year.	Subject.	Extent of repeal.
III of 1828 ...	Embezzlement ...	In section one, the last ten words.
VII of 1828 ...	Subordinate and Assistant Collectors.	In section one, the last ten words. Section seven.
V of 1829 ...	Hindú Wills ...	In section one, the last ten words.
I of 1830 ...	Satí ...	In section one, the words "from the time of their promulgation." In section four, clauses <i>First</i> and <i>Third</i> , the words "before the Court of Circuit." Clause <i>Second</i> , the words "at the discretion of the Court of Circuit."
VI of 1831 ...	Hereditary Village Offices	Section four, clause <i>Fourth</i> , from "and for this purpose" to the end of that clause. Clause <i>Fifth</i> .
X of 1831 ...	Prohibition of sale of Minors' Estates for arrears of revenue	In section one, the last ten words. Section three, down to the words "enacted that."
XI of 1832 ...	Hidden treasure ...	In section one, the words "as soon as promulgated." In sections two and seven, the word "Madras" wherever it occurs. In section three, the words "or to the assistant judge of the auxiliary court." In section four, the words "or assistant." In section six, the words "Madras" and "or assistant." In section eight, the words "or to the assistant judge of the auxiliary court." In section nine, the words "or of the assistant judges of the auxiliary courts" and the words "to the Provincial Courts." Section ten.
XIV of 1832 ...	Buying Soldiers' necessities	In section one, the last ten words. In section two, clauses <i>First</i> and <i>Second</i> , the words "from and after the date of the promulgation of this regulation," and "before the criminal, joint criminal, or native criminal judge within the limits of whose local jurisdiction the offence may have been committed."

## PART IV.

*Regulations of the Bombay Code.*

Number and year.	Subject.	Extent of repeal.
II of 1827 ...	Pleaders ...	In section fifty, clause <i>Third</i> , the words "under the rules contained in Section LVI of this Regulation". In section fifty-one, clause <i>Second</i> , the words "according to Section LVI of this Regulation". In section fifty-six, the words "under the rules regarding commissioners, contained in the Third Clause of Section XXXVIII of this Regulation". Appendix A, Appendix D.

*Regulations of the Bombay Code,—continued.*

Number and year.	Subject.	Extent of repeal.
V of 1827 ...	Limitation ...	In the title, the words, "defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and" and the word "Interest".
XII of 1827 ...	Police ...	The preamble. In section nineteen, clause <i>Sixth</i> , the words "personal restraint". In the same section, clause <i>Seventh</i> , the words "which shall be tried before the judge, or one of his assistants, exclusively".
XIII of 1827 ...	Criminal Courts ...	In section thirty-four, clause <i>Third</i> , the words "or" to the magistrate above mentioned".
XVI of 1827 ...	Revenue Administration ...	In the preamble, the words "to have effect throughout the zillahs subordinate to Bombay". In section two, clause <i>Second</i> , the words and figures "as more particularly specified in Regulation XVII A. D. 1827, Chapters VIII and X". In the title to Chapter III, the words "of hereditary district and village officers inclusive of". In section twenty-five, clause <i>Third</i> , the words "according to the Regulations".
XVII of 1827 ...	Jurisdiction of Revenue Authorities.	The title from "vesting" to the end. In the preamble, the words "to have effect throughout the territories subordinate to Bombay". In section twelve, clause <i>Sixth</i> , the words "Sudder, or any". In the title to Chapter IV, the words "and penal jurisdictions of the zillah magistrate and criminal judge in such cases".
XIX of 1827 ...	Revenue Administration ...	The title from "and for Collecting" down to "Horses," and the words "and also for levying Fees in the Court of Petty Sessions and Police Offices". In the preamble, the words "and whereas it has further been deemed expedient, under the authority of the British legislature for such purpose given, to levy certain taxes and fees at the presidency of Bombay". In section thirteen, clause <i>First</i> , the words "in the mode prescribed in the preceding section". In section twenty-nine, the words "in the manner and before the authority specified in Section XIV. Clause First, or by confession before the said authority," and from "and in case" down to "provided for".
XXI of 1827 ...	Duty on Opium ...	The title from "made with" down to "India". In the preamble, from "that the importation" down to "be prohibited". In section two, clause <i>First</i> , the words "(either such, as established by this or any other Regulation)". In section fifty-eight, clause <i>Second</i> , the words "which duty shall be fixed as prescribed in Section LVII, Clause Fifth, and". In section sixty, clause <i>Second</i> , the last eleven words.

*Regulations of the Bombay Code—concluded.*

Number and year.	Subject.	Extent of repeal.
XXII of 1827 ...	Military Courts ...	In section sixty-four, clause <i>Fourth</i> , the words "in the mode prescribed in Section LVII, Clause Fifth". Section seventy.
XXV of 1827 ...	State Prisoners ...	In the preamble, the words "which shall have effect within the territories subordinate to the presidency of Bombay." Section six. In section seven, the words "and to the Sudder Adawlut".
XXIX of 1827 ...	Dekkhan and Khândesh ...	In the preamble, the words and figures "to have effect from the 1st September 1827". Section two, from "and the said territories" to the end of clause <i>Second</i> . Section three, clause <i>First</i> , from "it is hereby" down to the word "First". In section five, clause <i>Third</i> , the last twenty-one words.
V of 1830 ...	Revenue Administration ...	In section one, clause <i>Third</i> , the words "and zillahi." Clause <i>Sixth</i> , the words "zillahi throughout". So much of section two as has not been repealed.
VII of 1830 ...	Dharwar ...	In the preamble, the words and figures "to have effect from the 1st of June, 1830". In section two, the first six words.
XIII of 1830 ...	Jágirdárs ...	In section four, the last thirteen words.

## PART VI.

*Acts of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
IV of 1862 ...	Markets and Fairs ...	Section five.
V of 1862 ...	Bhágdárs and Narwadárs ...	In section two, the words "and it is hereby further enacted, that."
VI of 1862 ...	Ahmadábád Tuluqdárs ...	In section fourteen, from "upon oath" down to "perjury."
II of 1863 ...	Claims to exemption from Land-Revenue.	In section three, the words "either at law or in equity." In section six, clause <i>Second</i> , and in section ten, the words "or Court of Law or Equity."
VI of 1863 ...	Public Conveyances ...	In section seven, the words "standing in the name of the Commissioner of Customs."
VII of 1863 ...	Summary Settlement of Claims to exemption from Land-Revenue.	In section seven, the words "either at law or in equity". In section nine, clause <i>Ninth</i> , and sections fourteen, twenty-eight and twenty-nine, the words "or Court of Law or Equity".

*Acts of the Governor of Bombay in Council,—continued.*

Number and Year.	Subject.	Extent of repeal.
IX of 1863 ...	Cotton Frauds ...	In section fourteen, the words "commutation and."
V of 1864 ...	Mámlatdárs' Courts ...	Section eighteen.
VIII of 1866 ...	Sale of Poisons ...	Section twenty-one.
XIII of 1866 ...	Witnesses before Legislative Council.	Section five.
XIV of 1866 ...	Edulabad and Wurrungaom	The preamble, and sections one and four.
III of 1867 ...	Cantonments ...	In section fifteen, the words "Bombay Act No. IV of 1865 ( <i>an Act for the Regulation of Mofussil Goals and the enforcement of discipline therein</i> ) or by" and the word "other." Section twenty-eight.
III of 1869 ...	Funds for local works ...	In sections two and thirteen, the words "or Sub-Collector" "and Sub-Collector," "or Sub-Collector respectively" wherever they occur. In section nine, the words "Act XXVI of 1850, or" and "other."
I of 1872 ...	Bombay City Police Super-annuation Fund.	Sections one and nine. In section three, the words "as well as all moneys and securities which have accumulated under the Sections of Act XIII of 1856, repealed by this Act." Section six.
II of 1872 ...	Repayment of loan to Bombay Corporation.	In section three, the words "under Bombay Act II of 1865." Section nine, down to "enacted that."
III of 1872 ...	Bombay Municipal Act ...	Sections one, sixty-three, seventy-two, three hundred and six. In section sixty-two, the words "on and from the date when this Act comes into operation." In section sixty-four, the words "from and after the day on which this Act comes into operation." In section two-hundred-and-twenty-nine, the first eleven words, and the words "after the date when this Act comes into operation." In section two-hundred-and-thirty-five, the first six words. In section three hundred and seven, the words "from the date referred to in the preceding Section."
I of 1873 ...	Bombay Port Trust ...	Section fifty-seven, from "Until such" to the end. Section fifty-eight. In section seventy-three, the proviso.
II of 1873 ...	Amending Bombay Municipal Act.	Section three.
IV of 1873 ...	Amending Bombay Act II of 1864.	Section two, clause one.



*Acts of the Governor of Bombay in Council,—concluded.*

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	Steam boilers ...	Section one.
VI of 1873 ...	District Municipalities ...	Section one. Section four, clause 4. Sections nineteen and twenty. Section twenty-one, clause four.
VII of 1873 ...	Salt ...	Section two.
II of 1874 ...	Jails, Bombay City ...	Section one. Section six, down to "Governor General, and". Section seven, the first thirteen words.
III of 1874 ...	Hereditary Offices ...	Section two and the schedule.

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to facilitate the preparation of the revised edition of the Indian Acts and Regulations which has been undertaken by the Legislative Department, and of which the first volume, containing the general Acts from 1854 to 1863 inclusive, has lately been published.

SIMLA; }  
The 9th October 1875. }

A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th October 1875:—

We, the undersigned Members of the Select Committee to which the Bill to consolidate

From Department of Revenue, Agriculture and Commerce, No. 132E, dated 6th June 1875, and enclosures.

" Marine Department, No. 29J, dated 17th September 1873, and enclosures.

" Government of Madras, No. 275, dated 24th October 1873, and enclosure.

" Marine Department, No. 15, dated 13th November 1873, and enclosures.

" Government of Bengal, No. 4368, dated 9th December 1873, and enclosures.

" Marine Department, No. 21, dated 4th December 1873, and enclosures.

" Assistant Secretary to Chief Commissioner, British Burma, No. 412, dated 3rd January 1874, and enclosure.

" Government of Bengal, No. 2002, dated 16th June 1874, and enclosures.

" ditto ditto No. 2793M, dated 31st August 1874, and enclosures.

" Government of Bombay, No. 1256, dated 9th October 1874.

Telegram from Government of Bombay, dated 1st December 1874.

Endorsement from Home Department, No. 2928, dated 5th December 1874, forwarding—  
Letter from Government of Madras, No. 378, dated 12th October 1874, and enclosure.

From Home Department, No. 20, dated 8th January 1875, and enclosures.

" G. A. Kittredge, Esq., dated 14th January 1875.

" Home Department, No. 208, dated 18th January 1875, and enclosures.

" ditto No. 105P, dated 20th January 1875, and enclosures.

" G. A. Kittredge, Esq., dated 21st January 1875.

" Chief Commissioner, British Burma, No. 1TC, dated 18th February 1875.

" Government of Bengal, No. 505, dated 17th February 1875.

" Messrs. Mackinnon, Mackenzie & Co., No. 124, dated 3rd March 1875.

" T. M. Russell, Esq., No. 126, dated 6th March 1875.

" Government of Madras, No. 88, dated 6th March 1875, and enclosure.

" Government of Bombay, No. 817, dated 17th March 1875, and enclosure.

" ditto ditto No. 1023, dated 6th April 1875, and enclosure.

" G. A. Kittredge, Esq., dated 12th April 1875.

" Home Department, No. 1208, dated 21st April 1875, and enclosures.

" Government of Bombay, No. 1244, dated 22nd April 1875, and enclosure.

" ditto No. 1562, dated 25th May 1875, and enclosures.

" Home Department, No. 1808, dated 23rd June 1875, and enclosures.

" Department of Revenue, Agriculture and Commerce, No. 177CT, dated 16th July 1875, and enclosures.

" Government of Bombay, No. 2225, dated 24th July 1875.

Note by the Hon'ble Sir T. D. Forsyth, dated 30th August 1875.

From Department of Revenue, Agriculture and Commerce, No. 812, dated 7th October

1875, and enclosures.

" ditto ditto ditto No. 313CT, dated 7th October

1875, and enclosures.

and amend the law relating to Native Passenger Ships and Coasting Steamers was referred. have the honour to report that we have considered the Bill and the papers noted in the margin.

Besides the detailed alterations which are set forth in the latter part of this Report, we have to call especial attention to the considerable alterations on the principle of the existing law and of the Bill as it was introduced into Council. One of these alterations concerns the

classification of ships or rather of voyages, and the other the measurement of space for passengers.

The Acts of Council which now regulate the carriage of Native passengers are XXV of 1859, XII of 1870, and XII of 1872. The Act of 1859 is confined to the Bay of Bengal and to certain specified voyages within that Bay, but it extends to every species of vessel, however small may be the number of passengers.

The Act of 1870 was framed to apply to voyages between India and ports either in the Red Sea or the Persian Gulf, but this part of that Act is confined to vessels which carry more than thirty Native passengers. This Act also contains a chapter relating to steam-vessels carrying any number of passengers on "coasting voyages" from or to any port or place within British India, and it subjects them to provisions less elaborate and less restrictive than those which apply to the voyages to the Red Sea or Persian Gulf. But it does not define the term "coasting voyage," which is a term by no means free from ambiguity.

The Act of 1872 effected a very important alteration in the Act of 1870 by making the rules laid down for voyages to the Red Sea or Persian Gulf apply to all vessels whether sailers or steamers which carry more than thirty passengers, and which fall within the scope of our legislation.

Thus it will be seen that before the Act of 1872, the law was in a very complicated and anomalous state. Very different rules were laid down for voyages bearing practically the same character: for instance, a voyage from Madras to Singapore would fall under one set of rules, and a voyage from Bombay to Bushire under another. There were no provisions applying to voyages from one British Indian port to another, except those for the specified voyages in the Bay of Bengal, and those which were laid down for "coasting steamers" whatever that expression might mean. The Act of 1872 very much simplified the law, but it did so by subjecting to one set of rules voyages of the most diverse character; so that, for instance, a voyage by steam from Bombay to Surat would be subjected to the same rules as one by sails from Madras to Jeddah. It was the hardship occasioned to first class steamers by this change of the law that led to the introduction of the Bill. And as we have been informed, the law being unsuitable to the circumstances was disregarded in many respects. The Bill as introduced kept to the existing classification of voyages and vessels, and sought to remove the existing hardships by giving larger powers to Local Governments to make exemptions and to adjust rules. It also put voyages in the Bay of Bengal and those to the westward on the same footing, and thus aimed at a material simplification of the arrangements made by the Acts of 1859 and 1870. But it was urged upon us that any system depending for its working upon exemptions by the executive had an element of great uncertainty and weakness in it; and that the Local Governments were not in a position to make rules, many of which, in order to work at all, must work in more than one province. At the same time, it was suggested that we might make a more simple and practical classification of voyages than was effected by the Acts of 1859 and 1870; and that by dividing them into voyages of greater or less length, and providing a more stringent set of rules for the former and a less stringent set for the latter, we might preserve an effectual control over the traffic while not enacting a law too rigid for practical working. We were also informed that the existing law was defective in requiring the passengers to be proportioned to the tonnage of the vessel, being a principle of measurement unsuitable to the build of the vessels in question, and that the principle of measurement by superficial and cubic feet of space would be more suitable.

For these suggestions we were indebted to Mr. Kittredge, a gentleman residing at Bombay and of much experience in the passenger-ship business. They appeared good to us, but we thought it would be imprudent to adopt them without first consulting local authorities. On that account we did not at once make any report to the Council, but we caused a provisional draft to be framed on the basis of Mr. Kittredge's two suggestions, and sent to the Maritime Governments for opinions. The result has been that we have received answers which show a general acceptance of the proposed alteration in the law, and which do not, in our opinion, show any valid objection to it.

We have therefore divided voyages into two classes: long voyages and short voyages: long voyages being those on which the ship will under ordinary circumstances be as much as five days out of port. We have required more stringent conditions of ships proceeding on long voyages. And we have abandoned measurement by tonnage, for measurement by space alone.

The Bill, as now framed, is divided into six Chapters: I. Preliminary; II. Rules for all voyages; III. Rules for short voyages; IV. Rules for long voyages; V. Penalties; VI. Miscellaneous.

#### CHAPTER I.—*Preliminary.*

In lieu of giving a definition of "Native passenger ship," we have made the Bill expressly apply to vessels carrying more than thirty passengers being Natives of Asia or Africa; but we have excluded from the operation of the proposed Act sailing-vessels not carrying as passengers more than thirty such Natives, steamers not carrying as passengers more than sixty such Natives; and sailing-vessels and steamers not intended to carry passengers to or from any port in British India.

We have omitted the definition of "Local Government," and have defined "passenger" as meaning a person above the age of twelve years or two persons between the ages of one year

and twelve years. We have also defined the expressions "voyage," "long voyage," "short voyage" and "Chief Officer of Customs."

#### CHAPTER II.—*Rules for all voyages.*

We have here provided that no ship shall discharge passengers at any port in British India other than a port appointed by Government. We think that notice of the time of sailing should be given not less than 24 hours before time, and we have provided that it may be given by the Owner or Agent as well as by the Master.

We think that no passenger ship should commence her voyage unless the Master has two certificates—one (designated as A) stating that the ship is seaworthy and properly equipped, &c., and the number of passengers that she is capable of carrying: the other (designated as B) stating the voyage that she is intended to make, that she has a proper crew, sufficient provisions, &c. Certificate A may be dispensed with, if the Master holds a certificate granted by the Board of Trade or by any British Colonial Government, or a certificate granted under the authority of a British Indian Government and not more than 6 months before the day of sailing. And we think that where the officer empowered to grant certificates under the proposed Act directs unreasonably a survey to be made of a vessel holding either of such certificates, the Local Government should pay the expense of the survey.

We have provided that the grant of certificates shall be in the discretion of the officer empowered to grant them.

#### CHAPTER III.—*Rules as to short voyages.*

We have here laid down rules as to the space to be provided for between-decks passengers and upper-deck passengers (a) in seasons of fair weather, (b) in seasons of foul weather. And we have declared that in seasons of foul weather no ship shall carry upper-deck passengers unless she provides for them a deck-house or other permanent protection. This chapter also provides for obtaining supplementary certificate in case the vessel ships additional passengers at intermediate ports and for reporting deaths which occur on the voyage.

#### CHAPTER IV.—*Rules for long voyages.*

Here we have first given rules as to the space to be provided for passengers (a) in sailing-vessels, (b) in steamers. We then declare that the certificate shall not be granted when the cargo is likely to prejudice the health or safety of the passengers. We have also provided for reporting any deaths which occur on the voyage. The remainder of this chapter (as to the statement, as to the number and sexes of the original and additional passengers, as to the bond to be given when the ship clears for a port in the Red Sea, and as to touching at Aden and obtaining a clean bill of health) repeat with mere verbal changes the provisions of Act XII of 1870.

#### CHAPTER V.—*Penalties.*

Nothing in this chapter requires special mention except section thirty-eight, which is founded on section eleven of Act XXV of 1859, and imposes a penalty on the Master of any ship bringing passengers from any place in Ceylon or in the Straits or to the east thereof to British India, in excess of the proportion authorized by the proposed Act or allowed by the license granted in respect of the ship at her port of departure.

#### CHAPTER VI.—*Miscellaneous.*

We think that the power to make subsidiary rules should be exercised solely by the Governor General in Council and not by the Local Governments with his previous sanction. We also think that the Governor General in Council should have the power to declare what shall be deemed to be, for the purposes of the proposed Act, a "long voyage," a "short voyage," "seasons of fair weather," and "seasons of foul weather."

Lastly, we have empowered the Governor General in Council to direct, in the case of any ship or class of ships, and for all or any voyages, the space to be contained for the passengers, and we have declared that such direction shall override the general provisions of the Act relating to such ship or class of ships.

We think that the Bill has undergone such alterations that it should be republished; that the opinions of the Local Governments concerned should be invited; and that meanwhile the further consideration of the Bill should be postponed.

A. HOBHOUSE

H. W. NORMAN,

A. EDEN.

A. CLARKE

T. D. FORSYTH.

T. C. HOPE

SINLA,

The 9th October 1875.

## THE NATIVE PASSENGER SHIPS BILL, 1876.

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#### SCHEDULE.

#### No. III.

*A Bill to consolidate and amend the law relating to Native Passenger Ships.*

Whereas it is expedient to consolidate and amend the law relating to Native Passenger Ships; It is hereby enacted as follows:—

#### CHAPTER I.

##### PRELIMINARY.

1. This Act may be called "The Native Passenger Ships Act, 1876."
2. It extends to the whole of British India, and applies—
  - (a) to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty;
  - (b) to all Native Indian subjects of Her Majesty without and beyond British India; and,
  - (c) subject to the exceptions mentioned in the subsequent part of this section, to vessels carrying

more than thirty passengers, being Natives of Asia or Africa.

Nothing herein contained applies—

(d) to any Ship-of-War or transport belonging to, or in the service of, Her Majesty;

(e) to any Ship-of-War belonging to any Foreign Prince or State;

(f) to any sailing-vessel not carrying as passengers more than thirty Natives of Asia or Africa;

(g) to any steamer not carrying as passengers more than sixty of such Natives;

(h) to any sailing-vessel or steamer not intended to convey passengers to or from any port in British India.

3. This Act shall come into force on such day as the Governor-General in Council directs by notification in the *Gazette of India*.

4. On and from that day the Acts specified in the Schedule hereto annexed shall be repealed.

But all ports, places and officers appointed, and all certificates granted, under any of such Acts, shall be deemed to be respectively appointed and granted under this Act;

and the last clause of section one of Act No. II of 1860 (to amend the law relating to the carriage of passengers by Sea) shall be read as follows:—

“Voyages from ports in British India to ports in the Red Sea or Persian Gulf, under the Native Passenger Ships Act, 1876.”

Interpretation clause. 5. In this Act—

the expression “Magistrate” means a person exercising powers not inferior to those of a Magistrate of the second class, and includes a Justice of the Peace, and, at the Port of Aden, the Political Resident and his Assistants:

the expression “ship” includes every description of vessel used in navigation not propelled by oars:

the expression “Master” includes every person (other than a pilot) having command or charge of a ship:

the expression “passenger” means a person above the age of twelve years, or two persons between the ages of one year and twelve years; but it does not include a person in attendance on another person who is not a Native of Asia or Africa, nor a child under one year of age:

the expression “voyage” means the whole distance between the ship’s port of departure and her final port of arrival:

the expression “long voyage” means any voyage during which the ship performing it will under ordinary circumstances be one hundred and twenty hours or upwards continuously out of port:

the expression “short voyage” means any voyage during which the ship performing it will never under ordinary circumstances be one hundred and twenty hours continuously out of port:

#### Illustration.

A ship starts from port A, and is destined finally to arrive at port B, between which ports the ordinary distance is ten days: but she is to touch at four intermediate ports, no one of which is under ordinary circumstances more than five days from the next one. This is a short voyage:

the expression “Chief Officer of Customs” means the executive officer of highest rank in the Department of Customs in any port to which this Act applies.

## CHAPTER II.

### RULES FOR ALL VOYAGES.

6. No ship carrying passengers shall depart Ship to sail only from or proceed from, or shall depart from, or shall proceed to, any port or place within British India other than such ports and places as the Local Government may from time to time appoint in this behalf;

and after any ship has departed or proceeded upon any voyage from a port or place so appointed, no person shall be received on board as a passenger, except at some other port or place so appointed.

7. The Master, owner or agent of every ship so departing or proceeding shall give notice of day of sailing, &c. authorized in this behalf by the Local Government that the ship is to carry Native passengers, and of her destination, and of the proposed time of sailing.

Such notice shall be given not less than twenty-four hours before such time.

8. After receiving such notice, the officer aforesaid, or any person authorized by him, shall be at liberty at all times to enter and inspect the ship and the fittings, provisions and stores therein.

9. No ship intended to carry passengers shall commence any voyage from any port or place appointed under this Act, unless the Master has two certificates to the effect hereinafter mentioned.

And the officer of Government whose duty it is to grant a port-clearance for such ship shall not grant the same unless the Master has such certificates.

10. The first of such certificates (hereinafter called “certificate A”) shall state that the ship is seaworthy and properly equipped, fitted and ventilated; and the number of passengers that she is capable of carrying.

11. The second of such certificates (hereinafter called “certificate B”) shall state—

(a) the voyage which the ship is intended to make, and the intermediate ports (if any) at which she is intended to touch;

(b) that she has the proper complement of officers and seamen;

(c) that she has provisions, fuel and water, over and above what is necessary for the crew, and the other things (if any) prescribed for the ship by rules



under section forty-seven, have been placed on board, of the quality prescribed by rule under the same section, properly packed, and sufficient to supply the passengers on board during the declared duration of the intended voyage, according to the scale for the time being prescribed by rule under the same section;

(d) that the master has certificate A;

(e) if she is intended to make a short voyage in a season of foul weather, and to carry upper-deck passengers, that she is furnished with a deck-house or other permanent protection for them;

(f) such other particulars (if any) as may for the time being be required for such ship under this Act.

12. The person by whom certificate B is to be granted shall in all cases be the officer referred to in section seven.

13. The person by whom certificate A is to be granted shall be the officer aforesaid, except that if the master of a ship produce to such officer either of the following certificates (namely)—

(a) a valid certificate granted by the Board of Trade or by any British Colonial Government,

(b) a certificate granted under the authority of any British Indian Government, and dated not more than six months before the proposed day of sailing,

and if the particulars required by section ten are certified thereby,

such officer may take any such certificate as evidence of such particulars, and it shall then be a valid certificate for the purposes of this Act.

14. After receiving the notice required by section seven, the officer aforesaid may, if he think fit, cause the ship to be surveyed at the expense of the master or owner by competent surveyors, who shall report to him whether the ship is, in their opinion, seaworthy and properly equipped, fitted and ventilated for her intended voyage.

Provided that he shall not cause any ship holding any certificate mentioned in section 13. clause (a) or clause (b) to be surveyed unless, from the ship having met with damage or having undergone alterations, or on other reasonable ground, he considers it likely that she may be found unseaworthy or not properly equipped, fitted or ventilated for her intended voyage.

If the officer aforesaid causes a survey to be made of any vessel holding any such certificate, and if the surveyors report that the vessel is seaworthy and properly equipped, fitted and ventilated for her intended voyage, and that there was no reasonable ground why the officer aforesaid should have thought it likely that she would be found unseaworthy, or not properly equipped, fitted or ventilated for her intended voyage, the expense of the survey shall be paid by the Local Government.

15. Subject to the provisions of section sixteen, the grant or withholding of a certificate under this Chapter shall in all cases be in the discretion of the officer aforesaid.

16. In the exercise of such discretion such officer shall be subject to the control of the Local Government, or of any intermediate authority which that Government may from time to time appoint in this behalf.

17. The Owner or Master shall put up in a conspicuous part of the ship, so as to be visible to persons on board the same, a copy of each of the said certificates granted by an officer appointed under this Act in respect of the ship, and shall keep such copies in such position during the voyage.

18. The requirements of this Act respecting the supply of provisions for passengers shall not, except as to the supply of water, be applicable to any passenger who has contracted to furnish his own provisions, and who has, in the opinion of such officer as the Local Government appoints in this behalf, actually furnished such provisions of the quality and to the amount for the time being prescribed by rules made under section forty-seven.

### CHAPTER III.

#### RULES FOR SHORT VOYAGES.

19. For seasons of fair weather every ship performing a short voyage shall contain in the between-decks at least six superficial feet and thirty-six cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper-deck at least four superficial feet for each such passenger and six superficial feet for each upper-deck passenger.

For seasons of foul weather every ship performing a short voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every intermediate or between-decks passenger, and shall contain on the upper deck at least four superficial feet for each such passenger, and twelve superficial feet for each upper-deck passenger. But in such seasons no ship shall carry upper-deck passengers unless she is furnished with a deck-house or other permanent protection against the weather for them.

20. If any ship performing a short voyage takes any additional passengers on board at any intermediate port or place, the Master shall obtain a supplementary certificate from the proper officer at such port stating—

(a) the number of passengers so taken on board, and

(b) that provisions, fuel and water (over and above what is necessary for the crew and the other things, if any, prescribed for the ship by rule under section forty-seven) have been placed on board of the quality prescribed by rule under the same section, properly packed and sufficient to supply the total number of passengers on board during the declared

duration of the intended voyage according to the scale for the time being prescribed by rule under the same section.

21. When the ship reaches her final port of arrival, the Master shall notify to such officer as the Governor General in Council may appoint in this behalf, the date and supposed cause of death of every passenger dying on the voyage.

#### CHAPTER IV.

##### RULES FOR LONG VOYAGES.

22. Every ship propelled by sails and performing a long voyage shall contain in the between-decks at least twelve superficial feet and seventy-two cubic feet of space for every passenger.

Every ship propelled by steam, or partly by steam and partly by sails, and performing a long voyage, shall contain in the between-decks at least nine superficial feet and fifty-four cubic feet of space for every passenger.

23. The officer authorized to grant a certificate under this Act, in respect of any ship mentioned in section twenty-two, shall not grant the same, unless he is satisfied that she has not on board any cargo likely from its quality, quantity, or mode of stowage, to prejudice the health or safety of the passengers.

24. The Master of every such ship, before departing or proceeding on any long voyage from any port or place in British India, shall sign two statements, specifying the number and the respective sexes of all the passengers, and stating the number of the crew; and shall deliver them to the officer last aforesaid, who shall thereupon (after having first satisfied himself that the numbers are correct) countersign and return to the Master one of such statements.

25. The Master shall note in writing on such last-mentioned statement and on any additional statement to be made under the next following section, the date and supposed cause of death of any passenger who may die on the voyage, and shall forthwith, on the arrival of the ship at her destination or at any port at which it may be intended to land passengers, and before any passengers are landed, produce the statement with any additions thereto made, to any person lawfully exercising Consular authority on behalf of Her Majesty at the port of arrival, if it be a foreign port, or to the Chief Officer of Customs, or the officer (if any) appointed under this Act to receive such statements at any port or place at which it is intended to land the passengers, or any of them.

26. If, after the ship has departed or proceeded on any long voyage, any additional passengers are taken on board at a port or place within British India appointed under this Act for the embarkation of passengers,

or if such ship, upon her voyage, touch or arrive at any such port, having previously received on

board additional passengers at any place without British India,

the Master shall obtain a fresh certificate to the effect of certificate B from the proper officer at such port, and shall make additional statements specifying the number and the respective sexes of all such additional passengers;

and all the provisions hereinbefore contained in that behalf shall be applicable to any certificate granted or statement made under this section.

27. In the case of every ship sailing from any port within British India to any port in the Red Sea, the officer whose duty it is to grant a port-clearance for any such ship, shall not grant such clearance unless and until the owner, agent, or master of such ship and two sureties resident in British India have by a joint and several bond become bound unto the Secretary of State for India in Council in the penal sum of five thousand rupees, for the purpose of binding the ship to touch at Aden on the outward voyage and there to obtain a clean bill of health, and to do the same on the homeward voyage if she continue (being propelled by sails) to carry more than thirty passengers, or (being propelled by steam or partly by steam and partly by sails) to carry more than sixty passengers.

28. Every ship carrying more than thirty passengers being Natives of Asia or Africa, and sailing from any port in British India to any port in the Red Sea,

or sailing from any port in the Red Sea to any port in British India,

shall touch at Aden, and shall not leave that port without having obtained from the proper authority a clean bill of health.

29. No bill of health shall be granted under section twenty-seven or section twenty-eight in case the ship has on board a greater number of passengers than in the proportion prescribed for her by this Act.

#### CHAPTER V.

##### PENALTIES.

30. If any ship departs or proceeds upon a voyage from or discharges passengers at any port or place within British India in contravention of the provisions of section six or section nine,

or if any person is received as a passenger on board a ship in contravention of the provisions of the second clause of section six,

the Owner or Master shall, for every passenger conveyed in such ship, or for every passenger so discharged or received on board, be liable to a penalty not exceeding one hundred rupees, or to imprisonment not exceeding one month, or to both;

and the ship, if found within two years in any port within British India, may be seized and detained by any Chief Officer of Customs until the penalties incurred under this Act by her owner or Master have been adjudicated, and the payment of the fines imposed on him under this Act, with all costs, has been enforced under the provisions hereinafter contained.

**31.** Any person impeding or refusing to allow the entry or inspection of ships authorized under this Act shall be liable to a fine not exceeding five hundred rupees for each offence, or to imprisonment for a term not exceeding three months, or to both.

**32.** Any Owner or Master wilfully failing to comply with the requirements of section seventeen, as to copies of certificates, shall, for every such failure, be liable to a fine not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

**33.** Any Master failing to comply with any of the requirements of section twenty-four or section twenty-five, as to the statement of passengers, or wilfully making any false entry or note in or on any such statement,

or wilfully failing to obtain any such supplementary certificate as is mentioned in section twenty, or to report deaths as required by section twenty-one, or to obtain any such fresh certificate, or to make any such statement of the number of additional passengers, as is mentioned in section twenty-six,

shall be liable to a fine not exceeding five hundred rupees for every such offence, or to imprisonment for a term not exceeding three months, or to both.

**34.** Any Master who, after having obtained any of the certificates mentioned in section nine or section twenty, or section twenty-six, fraudulently does or suffers to be done anything whereby such certificate becomes inapplicable to the altered state of the ship, her passengers, or other matters to which such certificate relates, shall be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

**35.** Any Master wilfully, and without satisfactory excuse, omitting to supply to any passenger the allowance of food, fuel and water prescribed by rule made under this Act and for the time being in force, shall be liable to a fine not exceeding twenty rupees for every passenger who has sustained detriment by such omission.

**36.** The Master of any ship described in section twenty-eight, who wilfully fails to touch at Aden, or leaves that port without having obtained the bill of health therein mentioned, shall, for every such offence, be liable to a fine not exceeding two thousand rupees, or to imprisonment not exceeding six months, or to both.

**37.** If any ship has on board any number of passengers which, having regard to the time of the year and other circumstances, is greater than the number allowed by the certificate, or, if arriving from a port where no certificate could be procured, has on board a number of passengers exceeding the number allowed by this Act for such ship, the Owner and Master shall, for every passenger over and above the number allowed by the certificate, be each liable to a fine not exceeding twenty rupees, and the Master shall

further be liable for each of such passengers to imprisonment not exceeding one week: Provided that the total term of imprisonment awarded under this section shall in no case exceed six months.

Any officer authorized in this behalf by the Local Government may cause all passengers over and above such number to disembark, and may forward them to any port of British India, and may recover the cost of so forwarding them from the Owner or Master of the ship as if such cost was a fine imposed under this Act, and a certificate under the hand of such officer shall be conclusive evidence of the amount of the cost aforesaid.

**38.** If any ship bringing Native passengers from any port or place in Ceylon or in the Straits of Malacca or to the east thereof into any port or place in British India, has on board a greater number of passengers than in the proportion prescribed by section nineteen, section twenty-two, or section fifty (as the case may be), or than the number allowed by the license or certificate (if any) granted in respect of such ship at her port or place of departure, the owner and master shall, for every passenger in excess of such proportion or of the number so allowed, be each liable to a fine not exceeding twenty rupees.

**39.** If the Master of any ship to which this Act applies lands any passenger at any port or place other than the port or place at which he may have contracted to land, unless with his previous consent, or unless such landing is made necessary by perils of the sea or other unavoidable accident, the Master shall, for every such offence, be liable to a penalty not exceeding two hundred rupees, or to imprisonment for any term not exceeding a month, or to both.

**40.** All offences against this Act shall be punishable in a summary manner by a Magistrate. If the person on whom any fine is imposed under this Act is the Master or Owner of a ship, and the fine is not paid at the time and in the manner prescribed by the order of payment, the Magistrate may, in addition to the ordinary means prescribed by law for enforcing payment, direct by warrant the amount remaining unpaid to be levied by distress and sale of the said ship, her tackle, furniture and apparel.

**41.** For the purpose of the adjudication of penalties under this Act, every offence against its provisions shall be deemed to have been committed within the limits of the jurisdiction of the Magistrate of the place where the offender is found.

**42.** The penalties to which Masters and Owners of ships are made liable by this Act, shall be enforced only by information laid at the instance of the officers appointed to grant certificates under this Act; or, at any port or place where there is no such officer, at the instance of the Chief Officer of Customs.

**43.** Any Magistrate imposing any fine under this Act may, if he thinks fit, direct the whole or any part thereof to be applied in compensating any

Application of fines.

person for any detriment which he may have sustained by the act or default in respect of which such fine is imposed, or in or towards payment of the expenses of the proceedings.

44. Whenever, in the course of any legal proceeding under this Act, the testimony of any witness is required in relation to the subject-matter of such proceeding, any deposition that he may have previously made in relation to the same subject-matter before any Justice or Magistrate in Her Majesty's dominions (including all parts of India other than those subject to the same Local Government as the port or place where such proceedings are instituted), or any British Consular Officer elsewhere, shall be admissible in evidence on due proof that such witness cannot be found within the jurisdiction of the Court in which such proceeding is instituted:

Provided that such deposition shall not be admissible unless—

(a) it is authenticated by the signature of the Justice, Magistrate, or Consular Officer;

(b) it was made in the presence of the person accused, and

(c) the fact that it was so made is certified by the Justice, Magistrate, or Consular Officer.

It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition; and in any criminal proceeding, such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.

## CHAPTER VI.

### MISCELLANEOUS.

45. The Chief Officer of Customs, or the officer (if any) appointed under this Act, at any port or place within British India at which any ship to which this Act applies touches or arrives, shall, with advertence to the provisions herein contained, send any particulars which he may deem important respecting the ship and the passengers conveyed therein, to the officer at the port from which the ship commenced her voyage, and also to the officer at any other port within British India where the passengers or any of them embarked.

And any officer appointed under this Act may at any port or place in British India at which any ship to which this Act applies touches, board such ship and inspect her in order to ascertain whether the provisions of this Act as to the number of passengers and otherwise have been complied with.

46. In any proceeding for the adjudication of any penalty incurred under this Act, any document purporting to be a report of such particulars or a copy of the proceedings of any Court of Justice duly authenticated, and also any like document purporting to be made and signed by any person lawfully exercising Consular authority on behalf of Her Majesty in any foreign port, shall be received in evidence, if the same appears to have been officially transmitted to any officer at or near the place where the proceeding under this Act is had.

47. The Governor General in Council may from time to time make rules consistent with this Act, to regulate, in the case of any

ship or class of ships to which this Act applies, all or any of the following matters:—

(a) the scale on which provisions, fuel and water are to be supplied to the passengers and the quality of such provisions;

(b) the medical stores and other appliances and fittings for maintaining health, cleanliness and decency to be provided on board;

(c) the boats, anchors and cables to be provided on board;

(d) the instruments for purposes of navigation to be supplied;

(e) and, generally, to carry out the provisions of this Act.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

48. The Local Government shall appoint such persons as it thinks fit to exercise and perform the powers and duties conferred and imposed by this Act.

49. The Governor General in Council may from time to time declare, by notification in the *Gazette of India*, what shall be deemed to be, for the purposes of this Act, "seasons of fair weather" and "seasons of foul weather," and for sailing vessels and steamers respectively, a "long voyage" and a "short voyage."

50. The Governor General in Council may from time to time direct, in the case of any ship or class of ships, and for all or any voyages, to which this Act applies, the number of superficial or of cubic feet of space to be contained for the passengers; and such direction shall override the provisions of sections nineteen and twenty-two so far as they apply to such ship or class of ships.

## SCHEDULE.

(See section 4.)

Number and year.	Title.
XXV of 1859	An Act to prevent the overcrowding of vessels carrying Native passengers in the Bay of Bengal.
XII of 1870	An Act for the regulation of Native Passenger Ships, and of steam vessels intended to convey passengers on coasting voyages.
XII of 1872	An Act to amend Act XII of 1870 (The Native Passenger Ships Act).
Madras Act II of 1862.	An Act to extend the provisions of Act XXV of 1859, entitled An Act to prevent the overcrowding of vessels carrying Native passengers in the Bay of Bengal.

WHITLEY STOKES,  
Secy. to the Govt. of India.



The following further Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th October 1875:—

We, the undersigned Members of the Select Committee to which the Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-Revenue was referred, have the honour to report that we have considered the papers noted in the margin, which have been received since we presented our Preliminary Report in April 1874. The Bill was republished in April 1874 as recommended by us. We are about to recommend the publication of a new draft which we denote as No. III.

Telegram from Government of Bombay, dated 21st March 1874.  
 From Government of Bombay, No. <sup>1533</sup>/<sub>65</sub>, dated 24th March 1874.  
 Ditto ditto, No. <sup>1577</sup>/<sub>65</sub> R, dated 25th March 1874.  
 Endorsement from Department of Revenue, Agriculture and Commerce, No. 280, dated 7th April 1874, forwarding—  
 Memorial of the Council of the East India Association, dated 27th February 1874, and enclosure.  
 From Government of Bombay, No. <sup>1594</sup>/<sub>84</sub> R, dated 10th April 1874, and enclosure.  
 From Department of Revenue, Agriculture and Commerce, No. 720 <sup>L.R.</sup>/<sub>84</sub>, dated 22nd August 1874, and enclosure.  
 From Government of Bombay, No. 5408, dated 12th October 1874, and enclosure.  
 From ditto ditto, No. 230, dated 19th January 1875, and enclosure.  
 From Department of Revenue, Agriculture and Commerce, No. 377, dated 4th September 1875, and enclosure.

1. We have altered section one, which wholly excludes certain proceedings from the operation of the proposed Act, first by striking out sub-section (b), and providing for its subject-matter in a new proviso added to section four; secondly, by modifying sub-section (a) in accordance with the principle of that new proviso, which will be presently explained; and thirdly, by excluding the Acts for the relief of the Ahmadabad taluqdars and the Broach Thakurs, and for the preservation of the Narwadari and Bhagdari tenures, and the Pensions Act.

2. Section 3 of the Bill deals with the proceedings excluded from the jurisdiction of the Civil Courts. It answers to section four in the draft now settled by us. The language of the North-Western Provinces Land-Revenue Act having been found in some respects unsuitable to the circumstances of Bombay, the section has been re-cast, under the seven main heads of service and analogous holdings, assessment of land-revenue, realization of land-revenue, records, partition of estates, claims to exemption, and boundaries. Claims relating to the validity of an engagement with Government for the payment of revenue of any kind, which were excluded from the cognizance of the Civil Courts by section three (b), we now propose to leave within it; but questions relating to boundaries we propose to exclude in conformity with the law in the new provinces of the Presidency, and in consideration of their usually technical nature, and the peculiarly local and detailed character of the questions they raise. We have added provisions regarding lands held under treaty, saranjams and other political tenures, which are merely a re-enactment of the existing law, with the view of consolidation. Our provisions regarding claims to set aside sales for arrears of land-revenue have been framed on the understanding that the Land-Revenue Code Bill now pending in the local Legislature, which contains safeguards against improper sales, will become law.

3. The list of exclusions from the jurisdiction of Civil Courts as now settled, stands as follows:—

(a) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order passed by Government under the same Act or any other law relating to the same subject and for the time being in force, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government to be held for service;

(b) objections to the amount or incidence of any assessment of land-revenue or cess or rate authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement;

(c) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by Government to superior holders or occupants for the recovery of their dues from inferior holders or tenants;



claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land-revenue;

(d) claims against Government—

- (1) to be entered in the settlement records or village-papers as liable for the land-revenue, or as superior holder, interior holder, occupant, or tenant; or
- (2) to have any entry made in any record of a revenue survey or settlement, or
- (3) to have any such entry either omitted or amended;

(e) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act No. I of 1865, or any other law for the time being in force;

(f) claims against Government—

- to hold land wholly or partially free from payment of land-revenue, or
- to receive payments charged on or payable out of the land-revenue, or
- to set aside any cess or rate authorized by Government, or
- respecting the occupation of waste or vacant land belonging to Government;

(g) claims regarding boundaries fixed under Bombay Act No. I of 1865 or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks.

4. It is not, however, proposed that these exclusions shall be absolute, under all circumstances. In the case of claims to exemption from payment of land-revenue, we consider that the true distinction between the province which is more proper to a Civil Court and that which is more proper to Revenue officers is to be found, not in the nature of the privilege claimed, but in the nature of the evidence by which it is supported. If the evidence consist of formal State documents, such as a law expressly creating or confirming an exemption, or a sanad, grant, judgment, or other formal adjudication affecting a particular property, then there can hardly be any dispute except one of construction, which is best remitted to a Civil Court. But where the question turns upon the validity of an alleged informal guarantee, or on the genuineness or authenticity of documents, though they may be said to emanate from a Native Government, or on oral evidence, and still more, when technical and special knowledge, historical research, or an accurate understanding of the political effect of political events, more or less distant and obscure, are indispensable, then we consider that the decision should rest with Revenue officers, and ultimately with the Government. For the Government is likely to have better information supplied to it; may select peculiarly skilled persons as its advisers; is not dependent on the facts and arguments which the parties may happen either to supply or to omit; is more accustomed to deal with affairs on a large scale and on a moral basis; and alone has a direct political responsibility for its actions and is at liberty to guide itself thereby.

These considerations account for our treatment of Act IV of 1868. While leaving within the cognizance of the Civil Courts all suits for establishing exemptions of the specific character recognized by sections 5 and 6 of that Act, which in point of fact cover the bulk of cases dealt with, we think it right that suits regarding such matters as the principles of assessment, exemptions other than the above, boundaries, and the occupation of waste lands the property of Government, should follow the same law in towns and cities as in the country.

5. In accordance with this principle, we have added to section four of our present Bill a proviso, by which we have expressly reserved to the Civil Courts cognizance of claims to hold land, wholly or partially exempt from land-revenue, under—

(h) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(i) an instrument or sanad given by the Governor of Bombay in Council under Bombay Act No. II of 1863, section one, clause first, or Bombay Act No. VII of 1863, section two, clause first, or

(j) any other written grant by the British Government expressly creating or confirming such exemption, or

(k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, Chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt;

and we have added illustrations of clause (h).

6. The provisions of section four are, of course, merely intended for the protection of the public, in the person of the Executive Government, and not in any way intended to hamper the prosecution of strictly private rights. In order, however, to make the point clear, we have framed a new section, numbered five, in which are saved the following suits:—

(a) suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the assessment

authorized by Government, or that such assessment had previous to such claim, payment or recovery, been satisfied in whole or in part, or that the plaintiff or the person whom he represents, is not the person liable for such assessment,

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement, or in any village-papers,

(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed from the latter, or

(d) suits other than suits against Government for possession of any land being a whole survey number or a recognized share of a survey number.

7. It has been suggested to us by the Government of Bombay that we should embrace in the present enactment other provisions of the existing law affecting the jurisdiction of the Civil Courts in matters of revenue, and we have therefore taken this opportunity of repealing and re-enacting several provisions of local enactments, (a) as to the liability of Revenue officers to the jurisdiction of the Civil Courts, and (b) as to litigation against Government.

8. We have amended the clause relating to appeals from the proceedings of Revenue officers, and empowered the Local Government to call for the record of the proceedings on such appeal and to pass orders thereon. We have also provided that no suits against Government for acts or omissions of Revenue Officers shall be entertained by the Civil Courts except when the plaintiff has exhausted his right of appeal.

9. Suits against Government or suits against Revenue Officers of which Government undertake the defence, involve as a rule questions of great and urgent importance to the community. We have therefore introduced a section providing that such suits shall if required be tried only by the District Judge, and that their trial shall have precedence over all other suits then pending.

10. We have also added a section (framed on the model of Act XVIII of 1873, section 205) empowering Judges to refer to the High Court questions as to whether their jurisdiction is excluded by the proposed Act.

11. We have revived certain repealed provisions of Bombay Regulation XVII of 1827, section thirteen, more clearly than was done by the Bill as last amended; and we have added a clause providing that all advances made by the Local Government for purposes other than those specified in the Land Improvement Act, 1871, section four, may be recovered from the persons to whom such advances are made as if they were arrears of land-revenue.

12. We recommend that the Bill, as now amended, be republished, and that its further consideration be postponed for the present.

SIMLA;  
The 8th October 1875.

T. C. HOPE.

A. HOBHOUSE.

W. MUIR.

A. J. ARBUTHNOT.

## THE BOMBAY REVENUE JURISDICTION BILL, 1875.

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#### SCHEDULE.

## No. III.

*A Bill to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.*

Whereas in certain parts of the Presidency of Bombay, the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency :

And whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing :

And whereas it is also expedient to revive certain provisions of the thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871 ;

It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Bombay Revenue Jurisdiction Act, 1875."

Commencement.

It shall come into force on the passing thereof ;

Extent.

And it shall extend to all the territories for the time being under the government of the Governor of Bombay in Council, but not so as to affect—

(a) any suit regarding the assessment of revenue on land situate in the Collectorate of Bombay, or the collection of such revenue ;

(b) any suit for the purpose of establishing an exemption from the payment of land-revenue under the provisions of Bombay Act No. IV of 1868, sections 5 and 6 ;

(c) any of the provisions of Bombay Acts V of 1862 and VI of 1862, or of Act XV of 1871, or of Act XXIII of 1871 ;

(d) any suit instituted on or before the seventh day of August 1873.

2. The enactments mentioned in the schedule hereto annexed are repealed to the extent specified in the third column thereof.

3. In this Act, unless there be something repugnant in the subject or context,—

"Land" also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights of way, ferries, fisheries, and all other benefits to rise out of land, and things attached to the earth so permanently fastened to things attached to the earth :

"Land-revenue" includes any sum realizable under any Act for the time being in force in the same manner as revenue assessed on land :

"Revenue officer" means any officer employed in the assessment or collection of land-revenue, or in the Survey or Forest Department, or in any other branches of Civil Administration for the time being assigned by law or the orders of Government to any officer as being employed in the assessment or collection of land-revenue.

"Government" includes any Revenue officer.

4. Notwithstanding anything contained in Bombay Regulations XVI and XVII of 1827, or the Bombay Survey and Settlement Act (I of 1865),

or in any other law now in force, and subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

(a) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order passed by Government under the same Act or any other law relating to the same subject for the time being in force, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjám, or on other political tenure, or to lands declared by Government to be held for service ;

(b) objections—

to the amount or incidence of any assessment of land-revenue or cess or rate authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement ;

(c) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by Government to superior holders or occupants for the recovery of their dues from inferior holders or tenants ;

claims to set aside on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land-revenue ;

(d) claims against Government—

(1) to be entered in the settlement records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant, or tenant, or

(2) to have any entry made in any record of a revenue survey or settlement, or

(3) to have any such entry either omitted or amended ;

(e) the distribution of land or allotment of land-revenue on partition of any estate under Bombay Act No. I of 1865, or any other law for the time being in force ;

(f) claims against Government—

to hold land wholly or partially free from payment of land-revenue, or

to receive payments charged on or payable out of the land-revenue, or

to set aside any cess or rate authorized by Government, or

respecting the occupation of waste or vacant land belonging to Government ;

(g) claims regarding boundaries fixed under Bombay Act No. I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks :

Provided that if any person claim to hold land wholly or partially exempt from payment of land-revenue under—

(A) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(i) an instrument or sanad given by the Governor of Bombay in Council under Bombay Act No. II of 1863, section one, clause first, or Bombay Act No. VII of 1863, section two, clause first, or

(c) any other written grant by the British Government expressly creating or confirming such exemption, or

(k) a judgment by a Court of law, or an adjudication duly passed by a competent officer under Bombay Regulation XVII of 1827, Chapter X, or under Act No. XI of 1852, which declares the particular property in dispute to be exempt; such claim shall be cognizable in the Civil Courts.

#### Illustrations to (k).

(1). It is enacted that in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain lands is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2). It is enacted that when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3). It is enacted that land-revenue shall not be leviable from any land held and entered in the land registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4). It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5). It is enacted that assessment shall be fixed with reference to certain considerations, and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class.

5. Nothing in section four shall be held to prevent the following suits:—

(a) suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the assessment authorized by Government, or that such assessment had previous to such claim, payment, or recovery been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such assessment;

(b) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of

a revenue survey or settlement or in any village papers;

(c) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed from the latter; or

(d) suits other than suits against Government for possession of any land being a whole survey number or a recognized share of a survey number.

6. All Revenue officers shall, except as

Liability of Revenue officers to the jurisdiction of the Civil Courts.

otherwise provided in this Act, be subject to the jurisdiction of the Civil Courts with respect to acts done by them in their official capacities.

Revenue officers shall not be liable to be sued for damages in any Civil Court for any act *bona fide* done, or ordered to be done, by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue officer absconds, or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers, or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties, although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

7. Nothing in any law for the time being in force, which authorizes the punishment of Revenue officers not punishment departmentally of any Revenue officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar the person aggrieved thereby from seeking in the Civil Court any remedy to which he may be entitled against such officer.

8. If any act done by a Revenue officer under orders from superior authority subsequently forms the ground of a civil suit against him, he shall appear and answer in such suit as if the act had been done solely by his own authority.

9. When any Revenue officer has, wilfully or from gross ignorance or neglect, been guilty of any illegal act or omission, the Local Government may either require him to defend at his own risk and cost any suit brought against him in consequence of such act or omission, or may, after the suit is decided, compel him to pay the costs and damages (if any) incurred by Government on account of such suit.

10. In every case in which but for the passing of this Act any act or omission of a Revenue officer would have been open to question in a Civil Court, any party aggrieved by such act or omission may, if no other appeal is given by any law for the time being in force, present an appeal within two months from the date of such act or

Appeals from proceedings of Revenue officers.

omission, to the immediate official superior of such officer; and if such official superior be of a grade inferior to that of a Commissioner of Revenue, then the party aggrieved by his decision on appeal may present a further appeal against such decision to the Commissioner of Revenue or such other officer as the Local Government appoints in this behalf.

Such further appeal must be presented within one month from the date of the decision complained of.

Any appeal under this section may be admitted after the period of limitation prescribed therefor when the appellant satisfies the officer appealed to that he had sufficient cause for not presenting the appeal within such period.

In computing any period of limitation so prescribed, the day on which the act, omission or decision complained of took place or was pronounced shall be excluded.

**11.** The Local Government may call for and Power to Local Government to call for record. examine the record of the proceedings on appeal under section ten of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed by him, and may reverse or modify his order, or, if it think fit, may direct that additional evidence be taken, or that the appeal be reheard.

**12.** No Civil Court shall entertain any suit Suits not to be entertained unless plaintiff has exhausted right of appeal. against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present.

**13.** No Subordinate Judge or Court of Small Certain Courts not to receive or register suits against Government. Causes shall entertain any suit in which Government is a defendant; but in every such case, such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of the Bombay Civil Courts Act, 1869, section 19,) such suit shall be instituted.

**14.** Whenever any suit is brought in any District Court against Government, Privileges of Government in suits in which it is concerned. or against any Revenue officer and the Local Government undertakes the defence thereof, it shall be lawful for the Local Government, by certificate signed by a Secretary thereto, to require—

(a) that such suit shall be tried by the District Judge himself, and shall not be transferred for trial to an Assistant Judge; and

(b) that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in such Court; and the Court shall give effect to every such requirement.

The privilege conferred on the Local Government by the clause (b) of this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

**15.** If in any suit instituted, or in any appeal presented in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court. Power to refer questions of jurisdiction to High Court.

On any such reference being made, the High Court may order the Judge either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

**16.** And whereas it is expedient to revive Revival of Bombay Regulation XVII of 1827, section 13. certain provisions of Bombay Regulation XVII of 1827, section 13, and to provide for the recovery by the Local Government of advances made for purposes other than those specified in section three of the Land Improvement Act, 1871; it is hereby further enacted as follows:

Notwithstanding any repeal effected by the Land Improvement Act, 1871, arrears of revenue of former years shall be recoverable by the Collector in the same way as current revenue, except that the preference given to demands for current land-revenue, as specified in section five of Bombay Regulation XVII of 1827, shall not extend to demands on account of the arrears for former years.

All advances made by the Local Government for purposes other than those specified in the Land Improvement Act, 1871, section four, may be recovered from the persons to whom such advances are made as if they were arrears of land-revenue. Recovery of certain advances made by Local Government.

#### SCHEDULE.

(See section 2.)

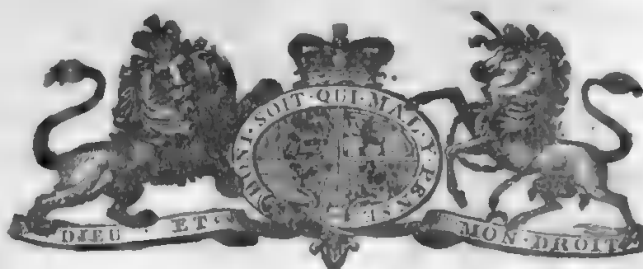
#### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Title or abbreviated Title.	Extent of repeal.
XVI of 1838 ...	Suits Bombay ...	In section 1, the words "or of the wuttuns of hereditary district or village officers."
X of 1848 ...	An Act for annexing the lapsed State of Mandvi to the Presidency of Bombay.	So much of section 2 as is not repealed.
XI of 1852 ...	An Act for the adjudication of titles to certain estates claimed to be wholly or partially rent-free in the Presidency of Bombay.	Section 7.
VIII of 1853 ...	An Act for bringing the lapsed State of Colaba under the laws of the Presidency of Bombay.	So much of section 2 as is not repealed.
XIV of 1869 ...	The Bombay Civil Courts Act.	Section 32.



ACTS OF THE GOVERNOR OF BOMBAY IN COUNCIL.			BOMBAY REGULATIONS.		
Number and year.	Title or abbreviated Title.	Extent of repeal.	Number and year.	Title or abbreviated Title.	Extent of repeal.
II of 1863 ...	An Act to facilitate the adjustment of unsettled claims to exemption from the payment of land-revenue, &c.	Section 13, from and including the words "it shall not" down to and including the words "is concerned." Section 14	XVI of 1827 ...	A Regulation defining the duties of the Collector, and his powers, &c.	Section 6. Section 14, clause 4.
III of 1863 ...	An Act for bringing under the Regulations and Acts of the Presidency of Bombay the territories of Sattara, certain villages and lapsed States in the Collectorate of Sholapur, &c.	Section 3.	XVII of 1827 ...	A Regulation for the territories subordinate to Bombay, prescribing Rules for the assessment and realization of the land-revenue, &c.	Section 9. Section 10, clause 5.
VII of 1863 ...	An Act for the summary settlement of claims to exemption from the payment of Government land-revenue, &c.	Section 2, Clause 4. Section 28, from and including the words "it shall not" down to and including the words, "the said Act." Section 29.	XXIX of 1827 ...	A Regulation for bringing under the operation of the Regulations the Bombay territories in the Dekkhan and Khândesh.	So much of section 6 as is not repealed.
I of 1865 ...	An Act to provide for the survey, demarcation, assessment, and administration of lands held under Government in the districts belonging to the Presidency of Bombay, &c.	The proviso to section 14.	V of 1830 ...	A Regulation providing for the appointment of a Revenue Commissioner, &c.	Section 1, clause 6, from the words "But if any act" to the end.
II of 1866 ...	An Act to divest Courts of Revenue of jurisdiction in certain cases, &c.	Sections 3, 6 and 9.	VII of 1830 ...	A Regulation for bringing under the Operation of the Regulations the Territories comprised in the Southern Mahratta Country, &c.	So much of section 2 as makes section 6 of Regulation XXIX of 1827 applicable to the territories comprised in the Southern Mahratta Country.
XIV of 1866 ...	An Act to bring the Pergunnas of Edulabad and Wurrungaom under the general Regulations and Acts of the Presidency of Bombay.	Section 2.			
II of 1871 ...	An Act for imposing duties on the non-agricultural classes, &c.	Section 17, from and including the words "and no suit" to the end.			

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 23, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

### GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th October 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 12 of 1875.

#### *A Bill for the repeal of certain obsolete enactments.*

Whereas it is expedient that the enactments mentioned in the schedule to this Act, which have ceased to be in force otherwise than by express and specific repeal, or have by lapse of time and change of circumstances become unnecessary, or which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:—

1. The enactments described in the schedule annexed to this Act are hereby repealed to the extent mentioned in the third column of the same schedule:

Provided that the repeal by this Act of any enactment shall not affect any Statute, Act or Regulation in which such enactment has been applied, incorporated, or referred to:

And this Act shall not affect the validity or invalidity of anything already done or suffered, or any indemnity already granted, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, or the proof of any past act or thing:

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived, by, in, or from any enactment hereby repealed:

Nor shall this Act provide or restore any jurisdiction, office, custom, privilege, restriction, exemption, usage or practice not now existing or in force.

2. This Act may be cited as "The Repealing Act, 1875": it extends to the whole of British India; and it shall come into force at once.

Short title.

Local extent.

Commencement.

## SCHEDULE.

*A description or citation of a portion of an Act or Regulation is inclusive of the words, section or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.*

## PART I.

*Acts of the Governor General in Council.*

Number and year.	Subject.	Extent of repeal.
IX of 1835 ...	Salt, Bengal ...	The whole.
XIX of 1838 ...	Coasting Vessels, Bombay	Section nine. In section twelve, the word "Indian." In section thirteen, the words "Justice of the Peace or person exercising the powers of a Magistrate."
XXIX of 1838 ...	Salt, Bengal ...	So much as has not been repealed.
VI of 1840 ...	Bills of Exchange ...	In section five, the words "after the passing of this Act."
XVIII of 1841 ...	Arms and Ammunition ...	Section two.
XIX of 1841 ...	Wrongful possession in case of succession.	In sections nine and eighteen, the word "that" where it occurs before the word "all", and the word "for."
I of 1846 ...	Pleaders ...	In sections seven and nine, the word "that" where it occurs before the word "it", and the word "persons."
VIII of 1846 ...	Settlement, N. W. Provinces	So much as has not been repealed.
XX of 1847 ...	Copyright ...	In section seven, the words "after the passing of this Act" and "in such part of the said territories"; and from "if he shall have so offended" down to "charter"; and from "to a special" to "no Zillah Court." In section thirteen, the word "that" where it occurs before the words "if the case."
XV of 1848 ...	Supreme Court Officers ...	In section four, the words "or the East India Company."
IX of 1850 ...	Presidency Small Cause Courts.	Sections three, forty-seven and ninety. In section one, the last thirty-seven words. In section eight, the words "not exceeding three." In section one hundred and one, the words "after the passing of this Act."
XXVI of 1850 ...	Improvements in Towns ...	So much as has not been repealed.
XXXVII of 1850...	Public Servants ...	Section seventeen.
VIII of 1851 ...	Tolls on Roads and Bridges	In section six, the words "of the zillah."
XVII of 1852 ...	Special Cases, Supreme Court.	Section twenty-six, from "which according" to "referred, but." Section thirty. In section thirty-two, the words "and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca." Section thirty-three.

*Acts of the Governor General in Council,—continued.*

Number and year.	Subject.	Extent of repeal.
XXI of 1852 ...	Deputy Collectors, Bombay	In section one, the words "zillah or."
XXX of 1852 ...	Naturalization ...	The last sixteen words of the schedule.
XVIII of 1854 ...	Railways ...	In section thirty-four, the words "or by any Assistant to a Magistrate or Deputy Magistrate". In section thirty-five, the words "and district or Joint Police officers in the Presidency of Bombay." In section forty, the words "within the said territories".
XXXI of 1854 ...	Real Actions, Conveyances	In section thirteen, the words "in the possession and".
VI of 1855 ...	Execution, Supreme Courts	Section fourteen, from "and the term" to the end.
XXIV of 1855 ...	Penal Servitude ...	In section one, the words "in the possession and".
VIII of 1856 ...	Gaols, Madras and Bombay	In section two, the first eight words.
II of 1857 ...	Calcutta University ...	In the preamble, the last four words. Section four, from "and the first" to the end. In section five; the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and "the Vice-Chancellor hereinbefore nominated or".
IV of 1857 ...	Tobacco, Bombay Town ...	In section five, the words "after the passing of this Act," and from "and the provisions" to the end of that section.
XI of 1857 ...	Offences against the State..	In section three, clause 1, the words "within the said territories", "of the crimes mentioned in the preceding sections, or any other". In section four, the words "without the attendance or futwa of a Law Officer,". Sections seven, eight, nine and ten. In section eleven, the words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate".
XXII of 1857 ...	Bombay University ...	In the preamble, the last four words. In section four, the last twelve words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXVII of 1857 ...	Madras University ...	In the preamble, the last four words. In section four, the last fourteen words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXIX of 1857 ...	Land Customs, Bombay ...	In section eleven, the words "by the said schedules". In section thirteen, the words "entered in either of the said schedules as".
III of 1858 ...	State Prisoners ...	Section four.

*Acts of the Governor General in Council—continued.*

Number and year.	Subject.	Extent of repeal.
I of 1859 ...	Merchant Seamen ...	In section sixty-three, the words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the Court of Judicature there". In section sixty-seven, the words "and in the Straits Settlement in such manner as the Governor shall notify".
III of 1859 ...	Cantonment Joint Magistrates	In the title, the words "and for constituting those Officers Registers of Deeds". In the preamble, the words "and that they should also be appointed Registers of Deeds within the same limits".
XV of 1859 ...	Patents ...	Sections thirteen and thirty-six.
XXXI of 1861 ...	Saltpetre ...	So much as has not been repealed.
XIII of 1863 ...	Imprisonment of Convicts, Bombay.	The whole.
XIV of 1863 ...	Amending Act X of 1859	So much as has not been repealed.
III of 1864 ...	Foreigners ...	In section twenty-four, the words "and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca".
XVII of 1864 ...	Official Trustee ...	In section three, the words "the said".
XXII of 1864 ...	Cantonments ...	In section eight, the words "and for constituting those Officers Registrars of Deeds".
XI of 1865 ...	Mofussil Small Cause Courts	In section twelve, the words "and for constituting those Officers Registers of Deeds".
XV of 1865 ...	Parsee Marriage and Divorce	Section fifty-three.
XXIX of 1865 ...	Pleaders ...	Sections one, two and three.
XII of 1866 ...	Private Water-courses ...	The whole.
XIV of 1866 ...	Post Office ...	Section fifty-five, and in section fifty-six the words "or by any Assistant to a Magistrate or Deputy Magistrate".
XXV of 1866 ...	Transfer of securities to Government.	The preamble from "And whereas" to "purposes aforesaid".
VII of 1867 ...	Purchases from Soldiers ...	In section one, first eight words.
XIII of 1867 ...	Port dues : Coast lights ...	Section two.
XIV of 1869 ...	Bombay Civil Courts ...	The second paragraph of section five. The second paragraph of section fourteen. Sections thirty and thirty-one.
XXII of 1870 ...	European British Subjects	Section one.
XXIII of 1870 ...	Coinage ...	Section eighteen, paragraph one.
XXVII of 1871 ...	Criminal tribes ...	Section twenty-three.
III of 1872 ...	Marriage ...	Section twenty and the fourth schedule.



*Acts of the Governor General in Council—concluded.*

Number and year.	Subject.	Extent of repeal.
X of 1872 ...	Criminal Procedure Code...	Section three.
XXI of 1872 ...	Sepoy Lunatics ...	Section six.
X of 1873 ...	Oaths ...	In section one, the third paragraph.
XVI of 1873 ...	Village Police, N.W. Provinces	In section one, the third paragraph.
III of 1874 ...	Married Women ...	Section three.
IV of 1874 ...	Foreign Recruiting ...	In section one, the third clause.
V of 1874 ...	Kullu Appeals ...	Sections one and four.
XV of 1874 ...	Laws Local Extent ...	Section nine and the seventh schedule. So much of the second schedule as relates to Madras Regulations III of 1831 and VII of 1832, and to section four of Madras Regulation IV of 1821, and to Act No. VIII of 1856.
XVI of 1874 ...	Repealing Act, 1874 ...	The whole.
III of 1875 ...	Amending Repealing Act, 1874.	The whole.
IV of 1875 ...	Merchant Shipping ...	Section two, and the third clause of section one.
VII of 1875 ...	Burma Fisheries ...	In section one, clause three.
VIII of 1875 ...	Inland Customs ...	Section two and the schedule.
X of 1875 ...	High Courts' Criminal Procedure	Sections thirty-nine and one-hundred-and-fifty-three.
XVI of 1875 ...	Tariff ...	Section two.

## PART II.

*Regulations of the Bengal Code.*

Number and year.	Subject.	Extent of repeal.
XII of 1817 ...	Patwáris ...	In section eight, the words "the Board of Commissioners, or the Commissioner in Behar and Benares, as the case may be," and "or Commissioner".  In sections thirteen, fifteen and sixteen, the words "the Board of Commissioners, or the Commissioner in Behar and Benares".  In section seventeen, the words "Board of Commissioners, or Commissioner in Behar and Benares".

## PART III.

*Regulations of the Madras Code.*

Number and year.	Subject.	Extent of repeal.
III of 1802 ...	Procedure of Civil Courts...	In section eleven, the words "Zillah" "of the Zillah" wherever they occur, and "by the Provincial Courts of Appeal, or the Sudder Adawlut." In section sixteen, clause <i>Second</i> , the words "Hindoo" "the judge of the Court of Adawlut" and "other," and the words and figures "under the general rule contained in section v., Regulation II., 1802, and proceed thereupon according to the regulations." In clause <i>Third</i> , the words "when they are to proceed thereupon according to the general regulations."
XIII of 1802 ...	Records of Courts ...	In section fifteen, the words and figures "in the same manner as is prescribed to the Provincial Courts of Appeal in section XII."
XXIX of 1802 ...	Karnams ...	Section four. In sections eighteen and nineteen, the words "before the Court of Circuit."
IX of 1803 ...	Customs Officer, Madras ...	In section fifty-five, the words "contrary to, or not warranted by, this Regulation." In section fifty-six, the words "conformable to the provisions contained in this Regulation." In section fifty-nine, the words "the register to" in each of the places where they occur. In section sixty-three, the words "contrary to, or not warranted by, this Regulation," and "in conformity to this Regulation." In section sixty-six, the words "to the Provincial Court of Appeal for the centre division, and from the decrees of that Court." In section sixty-seven, the words "the register of" "register of the" and "the registers of."
V of 1804 ...	Court of Wards ...	In section six, clause <i>Third</i> , the words "Courts of Appeal or to the" and "as it shall seem fit." In section twenty-four, clause <i>Second</i> , from "and it shall" to the end of that clause.
I of 1805 ...	Salt ...	In section eight, clause <i>First</i> , the words "After the date of the Regulation." In clause <i>Second</i> , the words "commercial residents." In section fourteen, clauses <i>First</i> , <i>Second</i> , and <i>Fourth</i> , the words "commercial residents" "by commercial residents." In section fifteen, the words "commercial residents." In section sixteen, the words "commercial resident" and "commercial residents." Section twenty-two.
VII of 1808 ...	Martial Law ...	In the preamble, the words and figures "from the 1st day of October, 1808." Section four, from "or before any special court" to the end of that section.

*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
IV of 1816 ...	Village Munsifs ...	Section four, clause <i>First</i> . In sections five and twenty-seven, the word "Arcot." In section sixteen, clause <i>Fifth</i> , the second sentence. Sections thirty-two and thirty-four.
V of 1816 ...	Village Pancháyats ...	In section three, clause <i>Second</i> , and in section four, clauses <i>Ninth</i> and <i>Tenth</i> , and in section sixteen, clause <i>First</i> , the word "Arcot." In section ten, the words "and no stamp paper need be used in plaint, answer, or any process." In section eleven, clause <i>First</i> , the words "upon stamp paper of the prescribed rate according to the amount of the suit." In clause <i>Fourth</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." Section fifteen. In section seventeen, the words "on stamped paper of the prescribed rate, according to the amount decreed."
XI of 1816 ...	Heads of Villages, &c. ...	In section forty-seven, the words and figures "as directed in section X, Regulation III., 1810."
XII of 1816 ...	References to Village and District Pancháyats ...	In section three, the words and figures "under the same provisions as are prescribed by clauses <i>Second</i> and <i>Third</i> , section XIV, Regulation VI., 1816." In section five, clause <i>Fourth</i> , and in section nine, clause <i>Third</i> , the word "Arcot." Section six, clause <i>First</i> , so far as it relates to Regulation VII., 1816. In section six, clause <i>Second</i> , the words and figures "without requiring the agreement specified in clause <i>Second</i> , section IV., Regulation VII., 1816." In section nine, clause <i>First</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." In section eleven, the words "exempt from all stamp-duties, and shall be" and the words and figures "or to such charges as are specified in Regulation VII., 1816, if decided by a district Panchayat."
XIV of 1816 ...	Pleaders ...	In the preamble, the words "and to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of vakeels or native pleaders in the Zillah Courts and in the Provincial Courts." In section three, clause <i>First</i> , the words "and the several Provincial Courts" "in their respective courts" "being natives of India of the Hindoo or Mahomedan persuasion, and" "for the approbation of the Provincial Court of the division," "being a native of India and otherwise," and clause <i>Second</i> from "and shall communicate" to the end of that section. In section four, the words "the Provincial Courts" and "which is not required to be written on stamped paper." In section eight, the words "and the Provincial Court, on consideration of the judge's report." In section ten, clause <i>First</i> , the words "and the several Provincial Courts."

*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
		<p>In clause <i>Second</i>, the words "a register or" and "report the circumstances of the case, together with his own opinion upon it, to the Provincial Court, who will."</p> <p>In section eleven, the words "without the previous sanction of the Provincial Court," and from and including the words "but in such" to the end of the section.</p> <p>In section thirteen, the words "on unstamped paper."</p> <p>In section fourteen, the word "Arcot" wherever it occurs.</p> <p>In section fifteen, clause <i>Second</i>, the words "or registers" and "either by a deduction from the fees which may become due to the offender, or."</p> <p>In section eighteen, clause <i>First</i>, the word "register."</p> <p>In clause <i>Third</i>, the words "Provincial Courts or to the" the second sentence, and the words "Provincial Courts and of the."</p> <p>In section twenty, the words "of the Provincial Courts," and "under the provisions contained in the following clauses of this section."</p> <p>In section twenty-five, clause <i>First</i>, the words "the Provincial Courts" and the word "Arcot" wherever it occurs.</p> <p>In clause <i>Third</i>, the words and figures "written on the stamped paper prescribed in section XI, Regulation XIII., 1816."</p> <p>In section thirty-six, the words "on unstamped paper."</p> <p>In section thirty-nine, the words "or district" and the figures "VI" and "VII."</p> <p>In the Appendix No. 1, the words "or in the Provincial Court for the division of."</p> <p>In the Appendix No. 2, the words "or the Provincial Court for the division of."</p>
VIII of 1817 ...	Estates of Native Soldiers	The Appendix, except No. 5.
I of 1819 ...	Settlement of Land-revenue	<p>In the preamble, the last eleven words.</p> <p>In section two, the words and figures "Section IX., Regulation XXVI., 1802, is hereby rescinded; and."</p> <p>In section four, the words "from and after the promulgation of this regulation."</p>
II of 1819 ...	State Prisoners ...	<p>In the preamble, the last nine words.</p> <p>Section eight.</p> <p>In section nine, the words "to the Provincial Court of Appeal and Circuit."</p>
IV of 1821 ...	Petty Thefts ...	In section six, clause <i>First</i> , the word "Madras."
IX of 1822 ...	Embezzlement by Public Servants	<p>In the preamble, the last ten words.</p> <p>In section three, clause <i>Third</i>, the words and figures "in the manner prescribed in Section VII., Regulation III of 1802."</p> <p>In section four, the second sentence.</p> <p>In section five, clause <i>Fourth</i>, the word "Arcot."</p> <p>In section eight, the words "before the criminal judge (who is hereby empowered to take cognizance of such cases)" and "by him."</p> <p>In section nine, the words "on oath."</p> <p>Section ten, from the words "and the rules" to the end of the section.</p> <p>Sections seventeen and eighteen.</p>

*Regulations of the Madras Code,—concluded.*

Number and year.	Subject.	Extent of repeal.
III of 1823 ...	Embezzlement. ...	In section one, the last ten words.
VII of 1828 ...	Subordinate and Assistant Collectors	In section one, the last ten words. Section seven.
V of 1829 ...	Hindú Wills ...	In section one, the last ten words.
I of 1830 ...	Sati ...	In section one, the words "from the time of their promulgation." In section four, clauses <i>First</i> and <i>Third</i> , the words "before the Court of Circuit." Clause <i>Second</i> , the words "at the discretion of the Court of Circuit."
VI of 1831 ...	Hereditary Village Offices	Section four, clause <i>Fourth</i> , from "and for this purpose" to the end of that clause. Clause <i>Fifth</i> .
X of 1831 ...	Prohibition of sale of Minors' Estates for arrears of revenue	In section one, the last ten words. Section three, down to the words "enacted that."
XI of 1832 ...	Hidden treasure ...	In section one, the words "as soon as promulgated." In sections two and seven, the word "Madras" wherever it occurs. In section three, the words "or to the assistant judge of the auxiliary court." In section four, the words "or assistant." In section six, the words "Madras" and "or assistant." In section eight, the words "or to the assistant judge of the auxiliary court." In section nine, the words "or of the assistant judges of the auxiliary courts" and the words "to the Provincial Courts." Section ten.
XIV of 1832 ...	Buying Soldiers' necessaries	In section one, the last ten words. In section two, clauses <i>First</i> and <i>Second</i> , the words "from and after the date of the promulgation of this regulation," and "before the criminal, joint criminal, or native criminal judge within the limits of whose local jurisdiction the offence may have been committed."

## PART IV.

*Regulations of the Bombay Code.*

Number and year.	Subject.	Extent of repeal.
II of 1827 ...	Pleaders ...	In section fifty, clause <i>Third</i> , the words "under the rules contained in Section LVI of this Regulation". In section fifty-one, clause <i>Second</i> , the words "according to Section LVI of this Regulation". In section fifty-six, the words "under the rules regarding commissioners, contained in the Third Clause of Section XXXVIII of this Regulation" Appendix A, Appendix D.



*Regulations of the Bombay Code,—continued.*

Number and year.	Subject.	Extent of repeal.
V of 1827 ...	Limitation ...	In the title, the words, "defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and" and the word "Interest".
XII of 1827 ...	Police ...	The preamble. In section nineteen, clause <i>Sixth</i> , the words "personal restraint". In the same section, clause <i>Seventh</i> , the words "which shall be tried before the judge, or one of his assistants, exclusively".
XIII of 1827 ...	Criminal Courts ...	In section thirty-four, clause <i>Third</i> , the words "or to the magistrate above mentioned".
XVI of 1827 ...	Revenue Administration ...	In the preamble, the words "to have effect throughout the zillahs subordinate to Bombay". In section two, clause <i>Second</i> , the words and figures "as more particularly specified in Regulation XVII A. D. 1827, Chapters VIII and X". In the title to Chapter III, the words "of hereditary district and village officers inclusive of". In section twenty-five, clause <i>Third</i> , the words "according to the Regulations".
XVII of 1827 ...	Jurisdiction of Revenue Authorities.	The title from "vesting" to the end. In the preamble, the words "to have effect throughout the territories subordinate to Bombay". In section twelve, clause <i>Sixth</i> , the words "Sudder, or any". In the title to Chapter IV, the words "and penal jurisdictions of the zillah magistrate and criminal judge in such cases".
XIX of 1827 ...	Revenue Administration ...	The title from "and for Collecting" down to "Horses," and the words "and also for levying Fees in the Court of Petty Sessions and Police Offices". In the preamble, the words "and whereas it has further been deemed expedient, under the authority of the British legislature for such purpose given, to levy certain taxes and fees at the presidency of Bombay". In section thirteen, clause <i>First</i> , the words "in the mode prescribed in the preceding section". In section twenty-nine, the words "in the manner and before the authority specified in Section XIV. Clause First, or by confession before the said authority," and from "and in case" down to "provided for".
XXI of 1827 ...	Duty on Opium ...	The title from "made with" down to "India". In the preamble, from "that the importation" down to "be prohibited". In section two, clause <i>First</i> , the words "(either such, as established by this or any other Regulation)". In section fifty-eight, clause <i>Second</i> , the words "which duty shall be fixed as prescribed in Section LVII, Clause Fifth, and". In section sixty, clause <i>Second</i> , the last eleven words.

*Regulations of the Bombay Code—concluded.*

Number and year.	Subject.	Extent of repeal.
XXII of 1827 ...	Military Courts ...	In section sixty-four, clause <i>Fourth</i> , the words "in the mode prescribed in Section LVII, Clause Fifth". Section seventy.
XXV of 1827 ...	State Prisoners ...	In the preamble, the words "which shall have effect within the territories subordinate to the presidency of Bombay." Section six. In section seven, the words "and to the Sudder Adawlut".
XXIX of 1827 ...	Dekkhas and Khándeah ...	In the preamble, the words and figures "to have effect from the 1st September 1827". Section two, from "and the said territories" to the end of clause <i>Second</i> . Section three, clause <i>First</i> , from "it is hereby" down to the word "First". In section five, clause <i>Third</i> , the last twenty-one words.
V of 1830 ...	Revenue Administration ...	In section one, clause <i>Third</i> , the words "and zillabs." Clause <i>Sixth</i> , the words "zillabs throughout". So much of section two as has not been repealed.
VII of 1830 ...	Dharwar ...	In the preamble, the words and figures "to have effect from the 1st of June, 1830". In section two, the first six words.
XIII of 1830 ...	Jágirdárs ...	In section four, the last thirteen words.

## PART VI.

*Acts of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
IV of 1862 ...	Markets and Fairs ...	Section five.
V of 1862 ...	Bhágdárs and Narwadárs...	In section two, the words "and it is hereby further enacted, that."
VI of 1862 ...	Ahmadábéd Taluqdárs ...	In section fourteen, from "upon oath" down to "perjury."
II of 1863 ..	Claims to exemption from Land-Revenue.	In section three, the words "either at law or in equity." In section six, clause <i>Second</i> , and in section ten, the words "or Court of Law or Equity."
VI of 1863 ...	Public Conveyances ...	In section seven, the words "standing in the name of the Commissioner of Customs."
VII of 1863 ...	Summary Settlement of Claims to exemption from Land-Revenue.	In section seven, the words "either at law or in equity". In section nine, clause <i>Ninth</i> , and sections fourteen, twenty-eight and twenty-nine, the words "or Court of Law or Equity".

*Acts of the Governor of Bombay in Council,—continued.*

Number and Year.	Subject.	Extent of repeal.
IX of 1863 ...	Cotton Frauds ...	In section fourteen, the words "commutation and."
V of 1864 ..	Mámlatdárs' Courts ...	Section eighteen.
VIII of 1866 ...	Sale of Poisons ...	Section twenty-one.
XIII of 1866 ...	Witnesses before Legislative Council.	Section five.
XIV of 1866 ...	Edulabad and Wurrungaom	The preamble, and sections one and four.
III of 1867 ...	Cantonments ...	In section fifteen, the words "Bombay Act No. IV of 1865 ( <i>an Act for the Regulation of Mofussil Goals and the enforcement of discipline therein</i> ) or by" and the word "other." Section twenty-eight.
III of 1869 ...	Funds for local works ...	In sections two and thirteen, the words "or Sub-Collector" "and Sub-Collector," "or Sub-Collector respectively" wherever they occur. In section nine, the words "Act XXVI of 1850, or" and "other."
I of 1872 ...	Bombay City Police Superannuation Fund.	Sections one and nine. In section three, the words "as well as all moneys and securities which have accumulated under the Sections of Act XIII of 1856, repealed by this Act." Section six.
II of 1872 ...	Repayment of loan to Bombay Corporation.	In section three, the words "under Bombay Act II of 1865." Section nine, down to "enacted that."
III of 1872 ...	Bombay Municipal Act ...	Sections one, sixty-three, seventy-two, three hundred and six. In section sixty-two, the words "on and from the date when this Act comes into operation." In section sixty-four, the words "from and after the day on which this Act comes into operation." In section two-hundred-and-twenty-nine, the first eleven words, and the words "after the date when this Act comes into operation." In section two-hundred-and-thirty-five, the first six words. In section three hundred and seven, the words "from the date referred to in the preceding Section."
I of 1873 ...	Bombay Port Trust ...	Section fifty-seven, from "Until such" to the end. Section fifty-eight. In section seventy-three, the proviso.
II of 1873 ...	Amending Bombay Municipal Act.	Section three.
IV of 1873 ...	Amending Bombay Act II of 1864.	Section two, clause one.

*Acts of the Governor of Bombay in Council,—concluded.*

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	Steam boilers ...	Section one.
VI of 1873 ...	District Municipalities ...	Section one. Section four, clause 4. Sections nineteen and twenty. Section twenty-one, clause four.
VII of 1873 ...	Salt ...	Section two.
II of 1874 ...	Jails, Bombay City ...	Section one. Section six, down to "Governor General, and". Section seven, the first thirteen words.
III of 1874 ...	Hereditary Offices ...	Section two and the schedule.

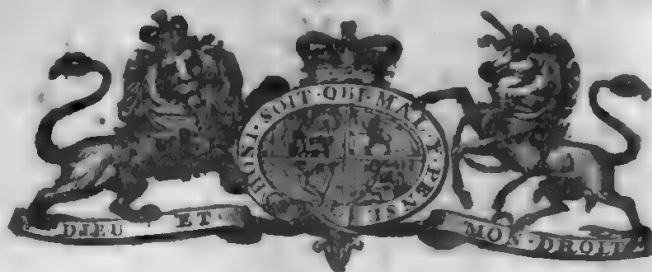
## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to facilitate the preparation of the revised edition of the Indian Acts and Regulations which has been undertaken by the Legislative Department, and of which the first volume, containing the general Acts from 1834 to 1863 inclusive, has lately been published.

SIMLA;  
The 9th October 1875. }

A. HOBHOUSE.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 30, 1875.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

(Third publication.)

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 13th October 1875, and was referred to a Select Committee with instructions to make their report thereon in two months.

No. 12 of 1875.

#### *A Bill for the repeal of certain obsolete enactments.*

Whereas it is expedient that the enactments mentioned in the schedule to this Act, which have ceased to be in force otherwise than by express and specific repeal, or have by lapse of time and change of circumstances become unnecessary, or which merely repeal prior enactments, should be expressly and specifically repealed; It is hereby enacted as follows:—

1. The enactments described in the schedule annexed to this Act are hereby repealed to the extent mentioned in the third column of the same schedule:

Provided that the repeal by this Act of any enactment shall not affect any Statute, Act or Regulation in which such enactment has been applied, incorporated, or referred to:

And this Act shall not affect the validity or invalidity of anything already done or suffered, or any indemnity already granted, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, or the proof of any past act or thing:

Nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, recognised, or derived, by, in, or from any enactment hereby repealed:

Nor shall this Act provide or restore any jurisdiction, office, custom, privilege, restriction, exemption, usage or practice not now existing or in force.

2. This Act may be cited as "The Repealing Act, 1875": it extends to the whole of British India; and it shall come into force at once.

Short title.

Local extent.

Commencement.



## SCHEDULE.

*A description or citation of a portion of an Act or Regulation is inclusive of the words, section or other part, first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.*

## PART I.

*Acts of the Governor General in Council.*

Number and year.	Subject.	Extent of repeal.
IX of 1835 ...	Salt, Bengal ...	The whole.
XIX of 1836 ...	Coasting Vessels, Bombay	Section nine. In section twelve, the word "Indian." In section thirteen, the words "Justice of the Peace or person exercising the powers of a Magistrate."
XXIX of 1838 ...	Salt, Bengal ...	So much as has not been repealed.
VI of 1840 ...	Bills of Exchange ...	In section five, the words "after the passing of this Act."
XVIII of 1841 ...	Arms and Ammunition ...	Section two.
XIX of 1841 ...	Wrongful possession in case of succession.	In sections nine and eighteen, the word "that" where it occurs before the word "all", and the word "for."
I of 1846 ...	Pleadings ...	In sections seven and nine, the word "that" where it occurs before the word "it", and the word "persons."
VIII of 1846 ...	Settlement, N. W. Provinces	So much as has not been repealed.
XX of 1847 ...	Copyright ...	In section seven, the words "after the passing of this Act" and "in such part of the said territories"; and from "if he shall have so offended" down to "charter"; and from "to a special" to "no Zillah Court." In section thirteen, the word "that" where it occurs before the words "if the case."
XV of 1848 ...	Supreme Court Officers ...	In section four, the words "or the East India Company."
IX of 1850 ...	Presidency Small Cause Courts.	Sections three, forty-seven and ninety. In section one, the last thirty-seven words. In section eight, the words "not exceeding three." In section one hundred and one, the words "after the passing of this Act."
XXVI of 1850 ...	Improvements in Towns ...	So much as has not been repealed.
XXXVII of 1850...	Public Servants ...	Section seventeen.
VIII of 1851 ...	Tolls on Roads and Bridges	In section six, the words "of the zillah."
XVII of 1852 ...	Special Cases, Supreme Court.	Section twenty-six, from "which according" to "referred, but." Section thirty. In section thirty-two, the words "and also the Court of Judicature of Prince of Wales' Island, Singapore and Malacca." Section thirty-three.

*Acts of the Governor General in Council,—continued.*

Number and year.	Subject.	Extent of repeal.
XXI of 1852 ...	Deputy Collectors, Bombay	In section one, the words "zillah or."
XXX of 1852 ...	Naturalization	The last sixteen words of the schedule.
XVIII of 1854 ...	Railways ...	In section thirty-four, the words "or by any Assistant to a Magistrate or Deputy Magistrate". In section thirty-five, the words "and district or Joint Police officers in the Presidency of Bombay." In section forty, the words "within the said territories".
XXXI of 1854 ...	Real Actions, Conveyances	In section thirteen, the words "in the possession and".
VI of 1855 ...	Execution, Supreme Courts	Section fourteen, from "and the term" to the end.
XXIV of 1855 ...	Penal Servitude	In section one, the words "in the possession and".
VIII of 1856 ...	Gaols, Madras and Bombay	In section two, the first eight words.
II of 1857 ...	Calcutta University	In the preamble, the last four words. Section four, from "and the first" to the end. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859," and "the Vice-Chancellor hereinbefore nominated or".
IV of 1857 ...	Tobacco, Bombay Town ...	In section five, the words "after the passing of this Act," and from "and the provisions" to the end of that section.
XI of 1857 ...	Offences against the State..	In section three, clause 1, the words "within the said territories", "of the crimes mentioned in the preceding sections, or any other". In section four, the words "without the attendance or futwa of a Law Officer,". Sections seven, eight, nine and ten. In section eleven, the words "lawfully exercising the powers of a Magistrate and any Assistant to a Magistrate or Deputy Magistrate".
XXII of 1857 ...	Bombay University	In the preamble, the last four words. In section four, the last twelve words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXVII of 1857 ...	Madras University	In the preamble, the last four words. In section four, the last fourteen words. In section five, the first sentence, and the words "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January 1859".
XXIX of 1857 ...	Land Customs, Bombay ...	In section eleven, the words "by the said schedules". In section thirteen, the words "entered in either of the said schedules as".
III of 1858 ...	State Prisoners	Section four.

*Acts of the Governor General in Council—continued.*

Number and year.	Subject.	Extent of repeal.
I of 1859 ...	Merchant Seamen ...	In section sixty-three, the words "or in any station of the Settlement of Prince of Wales' Island, Singapore, and Malacca, to the Court of Judicature there". In section sixty-seven, the words "and in the Straits Settlement in such manner as the Governor shall notify".
III of 1859 ...	Cantonment Joint Magistrates	In the title, the words "and for constituting those Officers Registers of Deeds". In the preamble, the words "and that they should also be appointed Registers of Deeds within the same limits".
XV of 1859 ...	Patents ...	Sections thirteen and thirty-six.
XXXI of 1861 ...	Saltpetre ...	So much as has not been repealed.
XIII of 1863 ...	Imprisonment of Convicts, Bombay.	The whole.
XIV of 1863 ...	Amending Act X of 1859	So much as has not been repealed.
III of 1864 ...	Foreigners ...	In section twenty-four, the words "and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca".
XVII of 1864 ...	Official Trustee ...	In section three, the words "the said".
XXII of 1864 ...	Cantonments ...	In section eight, the words "and for constituting those Officers Registrars of Deeds".
XI of 1865 ...	Mofussil Small Cause Courts	In section twelve, the words "and for constituting those Officers Registers of Deeds".
XV of 1865 ...	Parsee Marriage and Divorce	Section fifty-three.
XXIX of 1865 ...	Pleaders ...	Sections one, two and three.
XII of 1866 ...	Private Water-courses ...	The whole.
XIV of 1866 ...	Post Office ...	Section fifty-five, and in section fifty-six the words "or by any Assistant to a Magistrate or Deputy Magistrate".
XXV of 1866 ...	Transfer of securities to Government.	The preamble from "And whereas" to "purposes aforesaid".
VII of 1867 ...	Purchases from Soldiers ...	In section one, first eight words.
XIII of 1867 ...	Port dues : Coast lights ...	Section two.
XIV of 1869 ...	Bombay Civil Courts ...	The second paragraph of section five. The second paragraph of section fourteen. Sections thirty and thirty-one.
XXII of 1870 ...	European British Subjects	Section one.
XXIII of 1870 ...	Coinage ...	Section eighteen, paragraph one.
XXVII of 1871 ...	Criminal tribes ...	Section twenty-three.
III of 1872 ...	Marriage ...	Section twenty and the fourth schedule.

*Acts of the Governor General in Council—concluded.*

Number and year.	Subject.	Extent of repeal.
X of 1872 ...	Criminal Procedure Code...	Section three.
XXI of 1872 ...	Sepoy Lunatics ...	Section six.
X of 1873 ...	Oaths ...	In section one, the third paragraph.
XVI of 1873 ...	Village Police, N.W. Provinces	In section one, the third paragraph.
III of 1874 ...	Married Women ...	Section three.
IV of 1874 ...	Foreign Recruiting ...	In section one, the third clause.
V of 1874 ...	Kullu Appeals ...	Sections one and four.
XV of 1874 ...	Laws Local Extent ...	Section nine and the seventh schedule. So much of the second schedule as relates to Madras Regulations III of 1831 and VII of 1832, and to section four of Madras Regulation IV of 1821, and to Act No. VIII of 1856.
XVI of 1874 ...	Repealing Act, 1874 ...	The whole.
III of 1875 ...	Amending Repealing Act, 1874.	The whole.
IV of 1875 ...	Merchant Shipping ...	Section two, and the third clause of section one.
VII of 1875 ...	Burma Fisheries ...	In section one, clause three.
VIII of 1875 ...	Inland Customs ...	Section two and the schedule.
X of 1875 ...	High Courts' Criminal Procedure	Sections thirty-nine and one-hundred-and-fifty-three.
XVI of 1875 ...	Tariff ...	Section two.

## PART II.

*Regulations of the Bengal Code.*

Number and year.	Subject.	Extent of repeal.
XII of 1817 ...	Patwáris ...	In section eight, the words "the Board of Commissioners, or the Commissioner in Behar and Benares, as the case may be," and "or Commissioner".  In sections thirteen, fifteen and sixteen, the words "the Board of Commissioners, or the Commissioner in Behar and Benares".  In section seventeen, the words "Board of Commissioners, or Commissioner in Behar and Benares".

## PART III.

*Regulations of the Madras Code.*

Number and year.	Subject.	Extent of repeal.
III of 1802 ...	Procedure of Civil Courts ...	In section eleven, the words "Zillah" "of the Zillah" wherever they occur, and "by the Provincial Courts of Appeal, or the Sudder Adawlut." In section sixteen, clause <i>Second</i> , the words "Hindoo" "the judge of the Court of Adawlut" and "other," and the words and figures "under the general rule contained in section v., Regulation II., 1802, and proceed thereupon according to the regulations." In clause <i>Third</i> , the words "when they are to proceed thereupon according to the general regulations."
XIII of 1802 ...	Records of Courts ...	In section fifteen, the words and figures "in the same manner as is prescribed to the Provincial Courts of Appeal in section XII."
XXIX of 1802 ...	Karnams ...	Section four. In sections eighteen and nineteen, the words "before the Court of Circuit."
IX of 1803 ...	Customs Officer, Madras ...	In section fifty-five, the words "contrary to, or not warranted by, this Regulation." In section fifty-six, the words "conformable to the provisions contained in this Regulation." In section fifty-nine, the words "the register to" in each of the places where they occur. In section sixty-three, the words "contrary to, or not warranted by, this Regulation," and "in conformity to this Regulation." In section sixty-six, the words "to the Provincial Court of Appeal for the centre division, and from the decrees of that Court." In section sixty-seven, the words "the register of" "register of the" and "the registers of."
V of 1804 ...	Court of Wards ...	In section six, clause <i>Third</i> , the words "Courts of Appeal or to the" and "as it shall seem fit." In section twenty-four, clause <i>Second</i> , from "and it shall" to the end of that clause.
I of 1805 ...	Salt ...	In section eight, clause <i>First</i> , the words "After the date of the Regulation." In clause <i>Second</i> , the words "commercial residents." In section fourteen, clauses <i>First</i> , <i>Second</i> , and <i>Fourth</i> , the words "commercial residents" "by commercial residents." In section fifteen, the words "commercial residents." In section sixteen, the words "commercial resident" and "commercial residents." Section twenty-two.
VII of 1808 ...	Martial Law ...	In the preamble, the words and figures "from the 1st day of October, 1808." Section four, from "or before any special court" to the end of that section.



*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
IV of 1816 ...	Village Munsifs ...	Section four, clause <i>First</i> . In sections five and twenty-seven, the word "Arcot." In section sixteen, clause <i>Fifth</i> , the second sentence. Sections thirty-two and thirty-four.
V of 1816 ...	Village Pancháyats ...	In section three, clause <i>Second</i> , and in section four, clauses <i>Ninth</i> and <i>Tenth</i> , and in section sixteen, clause <i>First</i> , the word "Arcot." In section ten, the words "and no stamp paper need be used in plaint, answer, or any process." In section eleven, clause <i>First</i> , the words "upon stamp paper of the prescribed rate according to the amount of the suit." In clause <i>Fourth</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." Section fifteen. In section seventeen, the words "on stamped paper of the prescribed rate, according to the amount decreed."
XI of 1816 ...	Heads of Villages, &c. ...	In section forty-seven, the words and figures "as directed in section X, Regulation III., 1810."
XII of 1816 ...	References to Village and District Pancháyats ...	In section three, the words and figures "under the same provisions as are prescribed by clauses <i>Second</i> and <i>Third</i> , section XIV, Regulation VI., 1816." In section five, clause <i>Fourth</i> , and in section nine, clause <i>Third</i> , the word "Arcot." Section six, clause <i>First</i> , so far as it relates to Regulation VII, 1816. In section six, clause <i>Second</i> , the words and figures "without requiring the agreement specified in clause <i>Second</i> , section IV., Regulation VII., 1816." In section nine, clause <i>First</i> , the words "by the oaths of two credible witnesses at the least," and "Provincial." In section eleven, the words "exempt from all stamp-duties, and shall be" and the words and figures "or to such charges as are specified in Regulation VII., 1816, if decided by a district Panchayat."
XIV of 1816 ...	Pleaders ...	In the preamble, the words "and to transfer to the Provincial Courts the control now exercised by the Sudder Adawlut in the appointment and removal of vakeels or native pleaders in the Zillah Courts and in the Provincial Courts." In section three, clause <i>First</i> , the words "and the several Provincial Courts" "in their respective courts" "being natives of India of the Hindoo or Mahomedan persuasion, and" "for the approbation of the Provincial Court of the division," "being a native of India and otherwise," and clause <i>Second</i> from "and shall communicate" to the end of that section. In section four, the words "the Provincial Courts" and "which is not required to be written on stamped paper." In section eight, the words "and the Provincial Court, on consideration of the judge's report." In section ten, clause <i>First</i> , the words "and the several Provincial Courts."

*Regulations of the Madras Code,—continued.*

Number and year.	Subject.	Extent of repeal.
		<p>In clause <i>Second</i>, the words "a register or" and "report the circumstances of the case, together with his own opinion upon it, to the Provincial Court, who will."</p> <p>In section eleven, the words "without the previous sanction of the Provincial Court," and from and including the words "but in such" to the end of the section.</p> <p>In section thirteen, the words "on unstamped paper."</p> <p>In section fourteen, the word "Arcot" wherever it occurs.</p> <p>In section fifteen, clause <i>Second</i>, the words "or registers" and "either by a deduction from the fees which may become due to the offender, or."</p> <p>In section eighteen, clause <i>First</i>, the word "register."</p> <p>In clause <i>Third</i>, the words "Provincial Courts or to the" the second sentence, and the words "Provincial Courts and of the."</p> <p>In section twenty, the words "of the Provincial Courts," and "under the provisions contained in the following clauses of this section."</p> <p>In section twenty-five, clause <i>First</i>, the words "the Provincial Courts" and the word "Arcot" wherever it occurs.</p> <p>In clause <i>Third</i>, the words and figures "written on the stamped paper prescribed in section XI, Regulation XIII., 1818."</p> <p>In section thirty-six, the words "on unstamped paper."</p> <p>In section thirty-nine, the words "or district" and the figures "VI" and "VII."</p> <p>In the Appendix No. 1, the words "or in the Provincial Court for the division of."</p> <p>In the Appendix No. 2, the words "or the Provincial Court for the division of."</p>
VIII of 1817 ...	Estates of Native Soldiers	The Appendix, except No. 5.
I of 1819 ...	Settlement of Land-revenue	<p>In the preamble, the last eleven words.</p> <p>In section two, the words and figures "Section IX., Regulation XXVI., 1802, is hereby rescinded; and."</p> <p>In section four, the words "from and after the promulgation of this regulation."</p>
II of 1819 ...	State Prisoners	<p>In the preamble, the last nine words.</p> <p>Section eight.</p> <p>In section nine, the words "to the Provincial Court of Appeal and Circuit."</p>
IV of 1821 ...	Petty Thefts	In section six, clause <i>First</i> , the word "Madras."
IX of 1822 ...	Embezzlement by Public Servants	<p>In the preamble, the last ten words.</p> <p>In section three, clause <i>Third</i>, the words and figures "in the manner prescribed in Section VII., Regulation III of 1802."</p> <p>In section four, the second sentence.</p> <p>In section five, clause <i>Mourth</i>, the word "Arcot."</p> <p>In section eight, the words "before the criminal judge (who is hereby empowered to take cognizance of such cases)" and "by him."</p> <p>In section nine, the words "on oath."</p> <p>Section ten, from the words "and the rules" to the end of the section.</p> <p>Sections seventeen and eighteen.</p>

*Regulations of the Madras Code,—concluded.*

Number and year.	Subject.	Extent of repeal.
III of 1823 ...	Embezzlement ...	In section one, the last ten words.
VII of 1828 ...	Subordinate and Assistant Collectors	In section one, the last ten words. Section seven.
V of 1829 ...	Hindú Wills ...	In section one, the last ten words.
I of 1830 ...	Satí ...	In section one, the words "from the time of their promulgation." In section four, clauses <i>First</i> and <i>Third</i> , the words "before the Court of Circuit." Clause <i>Second</i> , the words "at the discretion of the Court of Circuit."
VI of 1831 ...	Hereditary Village Offices	Section four, clause <i>Fourth</i> , from "and for this purpose" to the end of that clause. Clause <i>Fifth</i> .
X of 1831 ...	Prohibition of sale of Minors' Estates for arrears of revenue	In section one, the last ten words. Section three, down to the words "enacted that."
XI of 1832 ...	Hidden treasure ...	In section one, the words "as soon as promulgated." In sections two and seven, the word "Madras" wherever it occurs. In section three, the words "or to the assistant judge of the auxiliary court." In section four, the words "or assistant." In section six, the words "Madras" and "or assistant." In section eight, the words "or to the assistant judge of the auxiliary court." In section nine, the words "or of the assistant judges of the auxiliary courts" and the words "to the Provincial Courts." Section ten.
XIV of 1832 ...	Buying Soldiers' necessaries	In section one, the last ten words. In section two, clauses <i>First</i> and <i>Second</i> , the words "from and after the date of the promulgation of this regulation," and "before the criminal, joint criminal, or native criminal judge within the limits of whose local jurisdiction the offence may have been committed."

## PART IV.

*Regulations of the Bombay Code.*

Number and year.	Subject.	Extent of repeal.
II of 1827 ...	Pleadings ...	In section fifty, clause <i>Third</i> , the words "under the rules contained in Section LVI of this Regulation". In section fifty-one, clause <i>Second</i> , the words "according to Section LVI of this Regulation". In section fifty-six, the words "under the rules regarding commissioners, contained in the Third Clause of Section XXXVIII of this Regulation" Appendix A, Appendix D.

*Regulations of the Bombay Code,—continued.*

Number and year.	Subject.	* Extent of repeal.
V of 1827 ...	Imitation ...	In the title, the words, " defining the Limitations, as to Time, within which Civil Actions may be prosecuted, and " and the word " Interest ".
XII of 1827 ...	Police ...	The preamble. In section nineteen, clause <i>Sixth</i> , the words " personal restraint". In the same section, clause <i>Seventh</i> , the words " which shall be tried before the judge, or one of his assistants, exclusively".
XIII of 1827 ...	Criminal Courts ...	In section thirty-four, clause <i>Third</i> , the words " or to the magistrate above mentioned".
XVI of 1827 ...	Revenue Administration ...	In the preamble, the words " to have effect throughout the zillahs subordinate to Bombay". In section two, clause <i>Second</i> , the words and figures " as more particularly specified in Regulation XVII A. D. 1827, Chapters VIII and X". In the title to Chapter III, the words " of hereditary district and village officers inclusive of". In section twenty-five, clause <i>Third</i> , the words " according to the Regulations".
XVII of 1827 ...	Jurisdiction of Revenue Authorities.	The title from " vesting " to the end. In the preamble, the words " to have effect throughout the territories subordinate to Bombay". In section twelve, clause <i>Sixth</i> , the words " Sudder, or any". In the title to Chapter IV, the words " and penal jurisdictions of the zillah magistrate and criminal judge in such cases".
XIX of 1827 ...	Revenue Administration ...	The title from " and for Collecting " down to " Horses," and the words " and also for levying Fees in the Court of Petty Sessions and Police Offices". In the preamble, the words " and whereas it has further been deemed expedient, under the authority of the British legislature for such purpose given, to levy certain taxes and fees at the presidency of Bombay". In section thirteen, clause <i>First</i> , the words " in the mode prescribed in the preceding section". In section twenty-nine, the words " in the manner and before the authority specified in Section XIV. Clause First, or by confession before the said authority," and from " and in case " down to " provided for".
XXI of 1827 ...	Duty on Opium ...	The title from " made with " down to " India". In the preamble, from " that the importation " down to " be prohibited". In section two, clause <i>First</i> , the words " (either such, as established by this or any other Regulation)". In section fifty-eight, clause <i>Second</i> , the words " which duty shall be fixed as prescribed in Section LVII, Clause Fifth, and ". In section sixty, clause <i>Second</i> , the last eleven words.

*Regulations of the Bombay Code—concluded.*

Number and year.	Subject.	Extent of repeal.
XXII of 1827 ...	Military Courts ...	In section sixty-four, clause <i>Fourth</i> , the words "in the mode prescribed in Section LVII, Clause Fifth". Section seventy.
XXV of 1827 ...	State Prisoners ...	In the preamble, the words "which shall have effect within the territories subordinate to the presidency of Bombay." Section six. In section seven, the words "and to the Sudder Adawlut".
XXIX of 1827 ...	Dekkhan and Khândesh ...	In the preamble, the words and figures "to have effect from the 1st September 1827". Section two, from "and the said territories" to the end of clause <i>Second</i> . Section three, clause <i>First</i> , from "it is hereby" down to the word "First". In section five, clause <i>Third</i> , the last twenty-one words.
V of 1830 ...	Revenue Administration ...	In section one, clause <i>Third</i> , the words "and zillahs." Clause <i>Sixth</i> , the words "zillahs throughout". So much of section two as has not been repealed.
VII of 1830 ...	Dharwar ...	In the preamble, the words and figures "to have effect from the 1st of June, 1830". In section two, the first six words.
XIII of 1830 ...	Jâgirdârs ...	In section four, the last thirteen words.

## PART VI.

*Acts of the Governor of Bombay in Council.*

Number and year.	Subject.	Extent of repeal.
IV of 1862 ...	Markets and Fairs ...	Section five.
V of 1862 ...	Bhâgdârs and Narwadârs...	In section two, the words "and it is hereby further enacted, that."
VI of 1862 ...	Ahmadâbâd Taluqdârs ...	In section fourteen, from "upon oath" down to "perjury."
II of 1863 ..	Claims to exemption from Land-Revenue.	In section three, the words "either at law or in equity." In section six, clause <i>Second</i> , and in section ten, the words "or Court of Law or Equity."
VI of 1863 ...	Public Conveyances ...	In section seven, the words "standing in the name of the Commissioner of Customs."
VII of 1863 ...	Summary Settlement of Claims to exemption from Land-Revenue.	In section seven, the words "either at law or in equity". In section nine, clause <i>Ninth</i> , and sections fourteen, twenty-eight and twenty-nine, the words "or Court of Law or Equity".



*Acts of the Governor of Bombay in Council,—continued.*

Number and Year.	Subject.	Extent of repeal.
IX of 1863 ...	Cotton Frauds ...	In section fourteen, the words "commutation and."
V of 1864 ..	Mámlatdars' Courts ...	Section eighteen.
VIII of 1866 ...	Sale of Poisons ...	Section twenty-one.
XIII of 1866 ...	Witnesses before Legislative Council.	Section five.
XIV of 1866 ...	Edulabad and Wurrungaom	The preamble, and sections one and four.
III of 1867 ...	Cantonments ...	In section fifteen, the words "Bombay Act No. IV of 1865 (an Act for the Regulation of Mofussil Courts and the enforcement of discipline therein) or by" and the word "other." Section twenty-eight.
III of 1869 ...	Funds for local works ...	In sections two and thirteen, the words "or Sub-Collector" "and Sub-Collector," "or Sub-Collector respectively" wherever they occur. In section nine, the words "Act XXVI of 1850, or" and "other."
I of 1872 ...	Bombay City Police Super-annuation Fund.	Sections one and nine. In section three, the words "as well as all moneys and securities which have accumulated under the Sections of Act XIII of 1856, repealed by this Act." Section six.
II of 1872 ...	Repayment of loan to Bombay Corporation.	In section three, the words "under Bombay Act II of 1865." Section nine, down to "enacted that."
III of 1872 ...	Bombay Municipal Act ...	Sections one, sixty-three, seventy-two, three hundred and six. In section sixty-two, the words "on and from the date when this Act comes into operation." In section sixty-four, the words "from and after the day on which this Act comes into operation." In section two-hundred-and-twenty-nine, the first eleven words, and the words "after the date when this Act comes into operation." In section two-hundred-and-thirty-five, the first six words. In section three hundred and seven, the words "from the date referred to in the preceding Section."
I of 1873 ...	Bombay Port Trust ...	Section fifty-seven, from "Until such" to the end. Section fifty-eight. In section seventy-three, the proviso.
II of 1873 ...	Amending Bombay Municipal Act.	Section three.
IV of 1873 ...	Amending Bombay Act II of 1864.	Section two, clause one.

*Acts of the Governor of Bombay in Council,—concluded.*

Number and year.	Subject.	Extent of repeal.
V of 1873 ...	Steam-boilers ...	Section one.
VI of 1873 ...	District Municipalities ...	Section one. Section four, clause 4. Sections nineteen and twenty. Section twenty-one, clause four.
VII of 1873 ...	Salt ...	Section two.
II of 1874 ...	Jails, Bombay City ...	Section one. Section six, down to "Governor General, and". Section seven, the first thirteen words.
III of 1874 ...	Hereditary Offices ...	Section two and the schedule.

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to facilitate the preparation of the revised edition of the Indian Acts and Regulations which has been undertaken by the Legislative Department, and of which the first volume, containing the general Acts from 1834 to 1863 inclusive, has lately been published.

SIMLA;  
The 9th October 1875. }

A. HOBHOUSE

WHITLEY STOKES,  
*Secy. to the Govt. of India.*



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 11, 1875. { Registrar  
No. 75.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th December 1875, and was referred to a Select Committee with instructions to make their report thereon in three months:—

No. 13 of 1875.

### THE SPECIFIC RELIEF BILL, 1876.

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#### SCHEDULE.—Enactments repealed.

*A Bill to define and amend the Law relating to certain kinds of specific Relief.*

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits ; It is hereby enacted as follows :—

## PART I.

### PRELIMINARY.

1. This Act may be called "The Specific Relief Act, 1876."

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874 ;

And it shall come into force three months after the passing thereof.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in its third column.

3. In this Act, unless there be something repugnant in the subject or context,—

'discretion' means a sound and reasonable discretion, exercised according to the rules for the time being in force in the Courts of Civil Judicature :

'obligation' includes every duty the breach of which is punishable by law :

'agreement' includes also an award and an obligation constructively created by operation of law :

'trust' includes every species of express, implied, or constructive fiduciary ownership :

'trustee' includes every person holding, expressly, by implication, or constructively, a fiduciary character :

#### Illustrations.

(a). Z bequeaths the land to A, 'not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.' A is a trustee within the meaning of this Act for B to the extent of the annuity.

(b). A is the legal, medical, or spiritual adviser of B. A gains some pecuniary advantage by availing himself of his situation as such adviser. A is a trustee within the meaning of this Act of such advantage.

(c). A, being B's banker, discloses for his own purposes the state of B's account. A is a trustee within the meaning of this Act of the benefit gained by him by means of such disclosure.

(d). A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease.

(e). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee within the meaning of this Act of the profit so made.

(f). A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this Act of the land so bought.

(g). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act to the extent of that interest.

'settlement' means any instrument (other than a will or codicil) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

4. Except so far as they are embodied in this Act, the provisions of the English law how far law of England shall not be inapplicable. applicable to the kinds of relief hereinafter mentioned.

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which, according to the general law applicable to contracts, is not a valid contract: or

(b) to deprive any person of any right to relief other than specific performance which, according to the same law, he may have under any contract.

Specific relief how given. 5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do,

(c) by prohibiting a party from doing that which he is under an obligation not to do; or

(d) by declaring and determining the rights of parties otherwise than by an award of compensation.

6. Relief granted under clause (c) of section five is called preventive relief. Preventive relief.

7. Specific or preventive relief cannot be granted for the mere purpose of enforcing a penal law. Purposes for which relief cannot be given.

## PART II.

### OF SPECIFIC RELIEF.

#### CHAPTER I.

##### OF RECOVERING POSSESSION OF PROPERTY.

##### (a).—Possession of Immoveable Property.

8. A person entitled to specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure. Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit. Suit by person dispossessed of immoveable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Nothing in this section applies to immoveable property claimed to belong to the Crown.

##### (b).—Possession of Moveable Property.

10. A person entitled to the immediate possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure. Recovery of specific moveable property.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which another is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

##### Illustrations.

(a). A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title deeds. B may recover them from C.

(b). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 188 of the Indian Contract Act, 1872.

(e). A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss.

##### Illustrations.

(a). A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

(b). A, a colliery-owner, keeps for the purpose of his business fifty coal-wagons. A sells B 50,000 tons of coal and lets to him the wagons to convey the coal. B, without A's authority, pledges the wagons to C, who threatens to sell them immediately. C may be compelled to deliver the wagons to A, for they are necessary for conducting his business, and their loss would cause him an injury for which money would not be an adequate compensation.

(c). A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.



## CHAPTER II.

## OF THE SPECIFIC PERFORMANCE OF AGREEMENTS.

(a). *Agreements which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any agreement may in the discretion of the Court be enforced—

Cases in which specific performance enforceable—

(a) when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance:

(b) when the act agreed to be done is in the performance, wholly or partly, of a trust:

(c) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done: or

(d) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief:

(e) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is shewn, it is to be presumed that the breach of an agreement to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of an agreement to transfer moveable property can be thus relieved.

## Illustrations.

(a). A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

(b). A sells 500 tons of iron stacked on his wharf to B, in consideration of a bill accepted by C, and undertakes in writing to deliver the iron to bearer, he (A) 'having been paid for the same.' B mortgages the iron to D. The bill is dishonoured. A refuses to deliver the iron. A holds the iron as a trustee for D, and D may compel him specifically to perform his agreement.

(c). A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. The articles are of too special a character to bear an ascertainable market-value. A may compel B specifically to perform this agreement, for it would be extremely difficult to ascertain the actual damage caused by its non-performance.

(d). A transfers without endorsement, but for valuable consideration, a note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

(e). A, B and C agree to enter into partnership for a definite term under the style of A & Co. A refuses to carry out the agreement. B and C may compel A to join them in executing a proper partnership-deed, for the interest of B and C in the performance of the agreement cannot be adequately compensated for by money.

(f). A agrees with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

(g). In consideration of being released from certain obligations imposed on it by its Act of incorporation, a railway company agree with Z to make and maintain an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct and maintain a siding and a wharf as specified in the agreement. Z is entitled to have this agreement specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

(A). A agrees to sell, and B agrees to buy, a certain number of railway-shares of a particular description. A refuses to complete the purchase. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

(i). A agrees with B to paint a picture for B, who agrees to pay therefor rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the rupees 1,000.

(j). A advances Rs. 10,000 to B, and B agrees to execute a mortgage of certain houses 'with an immediate power of sale' to secure the repayment of the advance. A requires B either to pay off the advance at once or to execute the mortgage. B refuses. A is entitled to have the agreement specifically performed.

13. When either of the parties to an agreement is entitled to a specific performance thereof according to the provisions of section twelve, the other party is also entitled to it, though not within those provisions.

## Illustration.

A agrees to sell, and B agrees to buy, a patent for 10,000 rupees. B declines to complete the purchase. Here, though pecuniary compensation for its non-performance might afford A adequate relief, A may enforce the agreement specifically, for, if he had declined to complete it, B would have been entitled to a specific performance thereof.

14. Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency.

## Illustrations.

(a). A agrees to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, and the loss of them may be made good in money. A may be directed at the suit of B to convey to B the 98 bighás and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b). In a contract for the sale and purchase of a house and lands for two lakhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party.

*Illustrations.*

(a). A agrees to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b). A agrees to sell to B an estate with a house and garden for 1,00,000 rupees. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

16. Except in cases coming under one or other Bar in other cases of specific performance of sections, it is not competent for the Court to direct the specific performance of a part of an agreement.

17. Where a person agrees to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor has subsequently acquired any interest in the property, the purchaser or lessee may compel him to make good the agreement out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the agreement, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to the costs of the suit, and to a lien for such deposit, interest and costs on the property agreed to be sold or let.

18. Any person suing for the specific performance of an agreement, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case,

and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the agreement has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

*Illustrations.*

(a). A, a purchaser, sues B, his vendor, for specific performance of an agreement for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the agreement.

(b). A agrees with B to sell him a house for Rs. 1,000 the price to be paid and the possession given on the 1st January 1876. A fails to perform his part of the agreement, and B brings his suit for specific performance, which is decided in his favour on the 1st January 1877. The decree may, besides ordering specific performance, award to B compensation for any loss or damage which he has sustained by A's refusal.

(c). A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

(d). A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the agreement or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

19. An agreement, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in the agreement as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

*Illustration.*

A agrees to grant B an underlease of property held by A under C, and covenants that if C refuses to grant a license necessary for that purpose, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the agreement specifically enforced.

(b). Agreements which cannot be specifically enforced.

Agreements not specifically enforceable.

20. The following agreements cannot be specifically enforced:—

- (a) an agreement for the breach of which compensation could not be recovered;
- (b) an agreement for the non-performance of which compensation in money is an adequate relief, and which does not come within section twelve, clause (a);
- (c) an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms;
- (d) an agreement which is in its nature revocable;
- (e) an agreement entered into by trustees either in excess of their powers or in breach of their trust;
- (f) an agreement entered into by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

(g) an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date;

(4) an agreement to submit a controversy to arbitration.

#### Illustrations.

To (a).—A agrees in consideration of Rs. 500 to obtain an office under the Crown for B. This agreement cannot be specifically enforced.

A, a banker holding bills as a security for advances to B, takes a guarantee from B's brother, C, that the loss to the bank should not exceed Rs. 20,000. This transaction took place after B had commenced proceedings for the liquidation of his affairs and unknown to his other creditors with a view to prevent A from opposing a composition. The guarantee cannot be specifically enforced, as the transaction would have the effect of giving A an undue advantage over B's other creditors.

A, a military pensioner of Government, in consideration of Rs. 500, agrees to assign to B all future payments in respect of his pension. This agreement cannot be specifically enforced.

A husband and wife, professing the Christian religion, enter into an agreement providing for their future separation. This agreement cannot be specifically enforced.

A agrees to grant B a lease of a certain house. The length of the term to be granted is not stated, nor the date at which it is to commence. This agreement cannot be specifically enforced.

A agrees with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." This agreement cannot be specifically enforced.

Z, a resident in Calcutta, agrees, as trustee for B, a resident in Australia, to sell to C an annuity to which B is entitled for his life. The day before the date of the agreement B had died. Z cannot enforce this agreement.

A, the lessee of a house much out of repair, agrees to sell the lease to B. Before the sale, A receives from his landlord a notice of re-entry in default of the premises being repaired. A does not communicate this notice to B, who enters and is ejected in consequence of the non-repair. A cannot enforce the agreement against B.

A, the owner of a patent, agrees to sell it to B. B institutes a suit to compel specific performance of this agreement. Before the suit is heard the patent expires. Specific performance of the agreement cannot be compelled.

On A's marriage with B, A's father, C, agrees with B's father, D, to settle certain lands on A and his children by B. D sues C to enforce specific performance of this agreement. C proves that the agreement was conditional on D settling a lakh of rupees on A and his children by B, and that D had not settled such lakh accordingly. The suit must be dismissed.

A, an author, agrees with B, a publisher, to complete a literary work, and dies before doing so. The agreement requiring A's personal skill and taste is discharged by his death, and B cannot enforce its performance as against A's representative.

A, a shoemaker, agrees with B to receive B's son as an apprentice for a term of years and teach him shoemaking. A dies before the expiration of the term. B cannot enforce performance of the agreement.

A and B enter into an agreement to become partners for a term and afterwards agree to rescind it.

A agrees to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

A agrees to buy certain houses in Calcutta, and before the completion of the agreement becomes insolvent. A's assignee, in exercise of his option under the Indian Insolvent Act, abandons the agreement.

In none of these cases can the agreement be specifically enforced.

To (b).—A agrees to sell, and B agrees to buy, a lakh of rupees in the four per cent. loan of the Government of India.

A agrees to sell, and B agrees to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B agrees to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

These agreements cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

To (c).—A agrees to render personal service to B.

A agrees to employ B on personal service.

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

These agreements cannot be specifically performed.

A lets land to B and B agrees to cultivate it in a particular manner for three years next after the date of the lease. A is not entitled to have this agreement specifically performed.

A and B agree that in consideration of annual advances to be made by A, B will for three years next after the date of the agreement grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery. A is not entitled to have this agreement specifically performed.

A agrees with B that in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B.

A agrees with B to execute certain works which the Court cannot superintend.

A agrees to supply B with all the goods of a certain class which B may require.

These agreements cannot be specifically enforced.

To (d).—A and B agree to become partners in a certain business, the agreement not specifying the duration of the proposed partnership. This agreement cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To (e).—A is a trustee of land with power to lease it for seven years. He enters into an agreement with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This agreement cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, agree to sell it to C for Rs. 30,000. The agreement is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines agree that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To (f).—A railway company contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To (g).—A agrees to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

#### (c). Of the Discretion of the Court.

21. The jurisdiction to decree specific performance is discretionary, and in granting specific performance the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where, though it is clear that an agreement has been made and broken, the Court cannot find, with reasonable certainty, what are the terms of the agreement of which specific performance is sought.

*Illustration.*

(a). A, the owner of a refreshment-room, agrees with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his agreement. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

II. Where the circumstances under which the agreement is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(b). A tenant for life of certain property assigns his interest therein to B. C agrees to buy, and B agrees to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is completed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance. If B knew the fact and C did not, specific performance should be refused to B.

(c). A agrees to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the agreement should be refused to A.

(d). A agrees to sell, and B agrees to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A industriously conceals it from him. Specific performance should be refused to B.

(e). A's property is put up to auction in one lot. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance should be refused to B.

(f). A contracts with B who at the time is intoxicated. Specific performance should be refused to A.

III. Where the performance of the agreement would involve some hardship on the defendant which he did not foresee, whereas no such hardship would fall on the plaintiff if the agreement was not performed.

*Illustrations.*

(g). A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, agrees, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the agreement would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(h). A and B, trustees, join their beneficiary, C, in an agreement to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the agreement, the vendors believed it to be sufficient. Specific performance of the agreement should be refused to D.

(i). A, the owner of an estate, agrees to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the agreement should be refused to B unless he waives his claim to the unknown property.

(j). A agrees with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing

himself to litigation. Specific performance of the part of the agreement relating to the road should be refused to B, though he may be entitled to specific performance of the rest with compensation for loss of the road.

(k). A, a lessee of mines, agrees with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance should be refused to B.

(l). A agrees to buy certain land from B. The agreement is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(m). A agrees with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the agreement should be refused to B.

IV. The circumstance that the plaintiff has done substantial acts or suffered losses in consequence of an agreement susceptible of specific performance is one which the Court may reasonably consider in exercising its discretion to grant specific performance of such agreement.

*Illustration.*

A sells land to a railway company who agree to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the agreement to execute the works should be awarded in favour of A.

(d.) For whom Agreements may be specifically enforced.

22. Except as otherwise provided by this chapter, the specific performance

Who may obtain specific performance. of an agreement may be obtained by—

(a) any party thereto:

(b) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the agreement, or where the agreement provides that his interest shall not be assigned, his representative in interest or principal shall not be entitled to specific performance of the agreement:

(c) where the agreement is a settlement on marriage, any person beneficially entitled thereunder:

(d) where the agreement has been entered into by a tenant for life in due exercise of a power, the remainderman:

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant:

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach:

(g) when a public company has entered into an agreement and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation:

(h) when the promoters of a public company have, before its incorporation, entered into an agreement for the purposes of the company, and such agreement is warranted by the terms of the incorporation, the company.



(e). *For whom Agreements cannot be specifically enforced.*

**23.** An agreement for the sale or letting of property cannot be specifically enforced in favour of a vendor or lessor—  
 Agreement to sell property by one who has no title or who is a voluntary settlor.

(a) who, knowing himself not to have any title to the property, has agreed to sell or let the same;

(b) who, though he entered into the agreement believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting give the purchaser or lessee a title free from reasonable doubt;

(c) who, previous to entering into the agreement, has made a voluntary settlement of the subject-matter thereof.

*Illustrations.*

(a). A agrees to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this agreement, even though C is willing to confirm it.

(b). A bequeaths his land to trustees, declaring that they should not sell it without the consent in writing of his sons and daughters. A dies. Then one of his daughters dies. The trustees then enter into an agreement with B to sell him the land. B refuses to carry out the agreement. The trustees cannot specifically enforce this agreement, as the title which they can give B is not free from reasonable doubt.

(c). A makes a voluntary settlement of certain property on his brothers and their issue, and afterwards enters into an agreement to sell the property to a stranger. A cannot enforce specific performance of this agreement so as to override the settlement and thus prejudice the interests of the persons claiming under it.

**24.** Specific performance of an agreement cannot be enforced in favour of a party—  
 Personal bars to the relief.

(a) who could not recover compensation for its breach;

(b) who has become incapable of performing, or violates, any essential term of the agreement that on his part remains to be performed; or

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract.

*Illustrations.*

(a). A agrees to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the agreement. Neither can B, although he might recover compensation from A's assignee for breach of the agreement.

(b). A agrees to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the agreement.

(c). A, holding land under an agreement with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce the agreement.

(d). A agrees to let, and B agrees to take, an unfinished house, B agreeing to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the agreement, though A and B may sue each other for compensation for breach of the agreement.

(e). A agrees to let, and B agrees to take, a house for a specified term at a specified rent. B refuses to perform the agreement. A thereupon sues for and obtains compensation for the breach of contract. A cannot obtain specific performance of the agreement.

(f). *For whom Agreements cannot be specifically enforced except with a variation.*

**25.** Where a plaintiff seeks specific performance of an agreement in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the agreement of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the agreement under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(c) where the defendant, knowing the terms of the agreement and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which goes to vary the agreement, but which he refuses to fulfil;

(d) where the parties have varied the agreement subsequently to its execution.

*Illustrations.*

(a). A, B and C sign a writing by which each agrees to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. A can obtain the performance sought only with the variation thus set up.

(b). A sues B to compel specific performance of an agreement in writing to buy a dwelling-house. B proves that he assumed that the agreement included an adjoining yard, and the agreement was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the agreement, except with the variation set up by B.

(c). A agrees in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the agreement, B proposed orally that he should be at liberty to substitute for the strip mentioned in the agreement another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written agreement. A cannot obtain specific performance of the written agreement except with the variation set up by B.

(d). A agrees in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenable repair. The house turns out to be not worth repairing, so with B's consent A pulls it down and erects a new house in its place: B agreeing orally to pay rent at Rs. 120 per mensem. B then sues to compel specific performance of the agreement in writing. He cannot enforce it except with the variations made by the subsequent oral agreement.

(g). *Against whom Agreements may be specifically enforced.*

**26.** Except as otherwise provided by this chapter, specific performance of an agreement may be enforced against—  
 Relief against parties and persons claiming under them by subsequent title.

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the agreement, except a transferee for value, who has paid his money in good faith and without notice of the original agreement;

(c) any person claiming under a title which, though prior to the agreement, and known to the plaintiff, might have been displaced by the defendant;

(d) when a public company has entered into an agreement, and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;

(e) when the promoters of a public company have, before its incorporation, entered into an agreement, the company: provided that the company has ratified and adopted the agreement and the agreement is warranted by the terms of the incorporation.

#### Illustrations.

(a). A agrees to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the agreement specifically.

(b). A agrees to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original agreement. B may enforce specific performance of the agreement as against C.

(c). A agrees to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce the agreement against C.

(d). A agrees in consideration of Rs. 1,000 to bequeath certain of his lands to B. Immediately after the agreement A dies intestate, and C takes out administration to his estate. B may enforce the agreement against C.

(e). A agrees to sell certain land to B. Before the completion of the agreement, A becomes a lunatic and C is appointed his committee. B may specifically enforce the agreement against C.

(f). A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, agrees to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the agreement against B.

(g). A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A agrees to sell his moiety to C and dies. C may enforce specific performance of the agreement against B.

(h). *Against whom Agreements cannot be specifically enforced.*

27. Specific performance of an agreement cannot be enforced against a party thereto in any of the following cases:—

(a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the agreement, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;

(b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention, or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;

(c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the agreement provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the agreement may be specifically enforced in other respects if proper to be so enforced.

#### Illustrations.

(a). A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(b). A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighas of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i). *The effect of dismissing a Suit for Specific Performance.*

28. The dismissal of a suit for specific performance of an agreement shall bar the plaintiff's right to sue for the breach of such agreement.

### CHAPTER III.

#### OF THE RECTIFICATION OF INSTRUMENTS.

29. When through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express the intention of the parties, the Court, on finding it clearly proved—

(a) that there has been fraud or mistake in framing the instrument, and

(b) that the intention of the parties in executing the instrument was as alleged by the plaintiff, may in its discretion rectify the instrument, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

#### Illustrations.

(a). A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included.

Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud.

The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b). By a marriage-settlement, A, the father of B, the intended wife, covenanted with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement, and decree that the assignee has no right to any part of the annuity.

30. For the purpose of rectifying a contract in writing, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

31. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

32. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced.

#### Illustration.

A agrees in writing to pay his attorney, B, a fixed sum in lieu of costs.

The agreement contains mistakes as to the name and rights of the client, which, if construed strictly, would have excluded B from all rights under the agreement. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.



## CHAPTER IV.

## OF THE RESCISSION OF CONTRACTS.

**33.** Any person interested in a contract in writing may sue to have it rescinded, and such rescission may be adjudged by the Court, in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

(b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;

(c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

**EXPLANATION.**—In the case mentioned in clause (c) of this section, when the purchaser or lessor is in possession of the subject-matter, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him, together with the costs occasioned by the non-completion of the purchase or lease.

*Illustration.*

To (b)—A, an attorney, induces B, his client, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

**34.** Rescission of a contract in writing cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

**35.** A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be enforced, it may be rescinded and delivered up to be cancelled.

**36.** On adjudging the rescission of a contract, the Court may require the party rescinding to do, party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER V.

## OF THE CANCELLATION OF INSTRUMENTS.

**37.** Any person having reasonable apprehension that a written instrument, if left outstanding, may cause serious injury to a person against whom it is void or voidable, may sue to have it so adjudged, and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

*Illustrations.*

(a). A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b). A conveys land to B, who bequeaths it to C and dies. Thereupon, D gets possession of the land, and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c). A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument dated the 1st January 1876. Soon after that day, A fraud-

ulently grants to C a lease of part of the lands, dated the 1st October 1874. B may obtain the cancellation of this lease.

(d). A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 10,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

**38.** Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

*Illustration.*

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand as regards A, B, D and E.

**39.** On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

## CHAPTER VI.

## OF DECLARATORY DECREES.

**40.** Any person entitled to any legal character, or to any future right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

**EXPLANATION.**—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Provided that no Court shall make any such declaration in any of the following cases:—

- (a) where the right as to which the declaration is sought is contingent, or may never arise;
- (b) where the plaintiff is in possession of the right which he seeks to have declared;
- (c) where the right respecting which the declaration is sought could be enforced by ordinary suit.

**EXPLANATION.**—The presumptive right of a Hindú to property, if he survive the widow of a sonless Hindú, is not within clause (a) of the above proviso.

*Illustrations.*

(a). A bequeaths his property to B, C and D, "to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children." No such children are in existence. In a suit against A's executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, but it may not declare the interests of the children before their rights are vested.

(b). A covenants that if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court cannot make the declaration.

(c). The widow of a sonless Hindú alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her, may, in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow's life-time.

(d). A Hindú widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may, in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(e). A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. This alone is not enough to entitle A to a declaration of his right to hold the property.

(f). A bequeaths property to B for his life, with remainder to B's wife and her children, if any, by B, but if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married. D and her children may, in B's life-time, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

41. A declaration made under this chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence, such parties would be trustees.

#### Illustration.

A, a Hindú, in a suit to which B, his alleged wife, and her mother are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

### CHAPTER VII.

#### OF THE ENFORCEMENT OF PUBLIC DUTIES.

42. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, on application, make an order requiring any specific act to be done by any person holding a public office of a permanent nature, or by any corporation or inferior Court of Judicature: provided—

(a) that such act is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character;

(b) that, in the opinion of the High Court, such act is consonant to right and justice;

(c) that the applicant has no other specific and adequate legal remedy; and

(d) that the remedy given by the order applied for will be complete.

Nothing in this section shall be deemed to authorize any High Court—

(c) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal; or

(d) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown.

43. Every application under section forty-two must be founded on an affidavit of the party injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, either make the order applied

for absolute in the first instance, or refuse it and grant a rule to show cause why the order applied for should not be made.

If, in the latter case, the party complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do the act required, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

44. If the person to whom such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do the act absolutely.

45. Every order under this chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

46. The costs of all applications and orders under this chapter shall be in the discretion of the High Court.

47. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

48. Each of the said High Courts shall, as soon as conveniently may be, frame rules to regulate the procedure under this chapter; and until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this chapter.

### PART III.

#### OF PREVENTIVE RELIEF.

### CHAPTER VIII.

#### OF INJUNCTIONS GENERALLY.

49. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual.

50. Temporary injunctions are such as are to continue until a specified time. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit: the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

### CHAPTER IX.

#### OF PERPETUAL INJUNCTIONS.

51. Subject to the other provisions contained in, or referred to by, this chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether express or implied.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in chapter II of this Act.

When such obligation arises from an actual or threatened invasion by the defendant of the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely)—

(a) where the parties have expressly agreed in writing that, in case of such invasion, a perpetual injunction may be granted:

(b) where there exists no standard for ascertaining the actual damage caused by the invasion:

(c) where the invasion is such that pecuniary compensation would not afford adequate relief:

(d) where it is probable that pecuniary compensation cannot be got for the invasion:

(e) where the injunction is necessary to prevent a multiplicity of judicial proceedings:

(f) where the obligation arises from a trust.

#### Illustrations.

(a.) A lets certain land to B, and B agrees not to dig sand or gravel thereout. A may obtain an injunction to restrain B from digging in violation of his agreement.

(b.) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may obtain an injunction to restrain them from doing so.

(c.) A lets certain arable lands to B for purposes of husbandry, but without any express agreement as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may obtain an injunction to restrain B from sowing the lands in contravention of his implied agreement to use them in a husbandlike manner.

(d.) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, obtain an injunction to restrain A from doing the act.

(e.) A, a Hindú widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir expectant may obtain an injunction to restrain her.

(f.) A, B and C are members of an undivided Hindú family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may obtain an injunction to restrain him.

(g.) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the official assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may obtain an injunction to restrain further acts of trespass.

(h.) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may obtain an injunction to restrain them.

(i.) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets. B proceeds against C's estate for his debt. A may obtain an injunction to restrain B.

(j.) A and B are in possession of contiguous lands and of the mines underneath them. A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may obtain an injunction to restrain him from so doing.

(k.) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may obtain an injunction restraining A from making the noise.

(l.) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may obtain an injunction to restrain the pollution.

(m.) A builds a house with eaves projecting over B's land. B may obtain an injunction to prevent A from so doing.

(n.) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(o.) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(p.) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(q.) In order to sell his goods, A uses marks, labels or descriptions so closely resembling those used by B as to be likely to deceive buyers into thinking that they are actually buying B's goods. B may obtain an injunction to restrain the user, provided his own use of the marks, labels or descriptions be an honest one.

(r.) A sells an article called "Mexican Balm", stating that it is compounded of diverse rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

(s.) A trustee threatens a breach of trust. His co-trustees, if any, should and the beneficial owners may, obtain an injunction to prevent the breach.

(t.) The directors of a public company are about to pay a dividend out of capital or borrowed money. Any of the shareholders may obtain an injunction to restrain them.

(u.) The directors of a fire and life insurance company are about to engage in marine insurances. Any of the shareholders may obtain an injunction to restrain them.

(v.) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(w.) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may obtain an injunction to restrain A from so doing.

(x.) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may obtain an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(y.) A makes a voluntary settlement of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may obtain an injunction to restrain the sale.

(z.) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may obtain an injunction to restrain A from so doing.

(aa.) A mortgages lands to B with the usual power of sale. C and D then recover judgments against A. B exercises the power and threatens to part with the surplus-moneys. As regards these, he is a trustee for A and those claiming under A. C and D may therefore obtain an injunction to restrain B from parting with the surplus.

(bb.) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may obtain an injunction to restrain him from so doing.

(cc.) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and can obtain an injunction to restrain C from publishing them.

(dd.) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival-manufacturer. A can obtain an injunction to restrain B from disclosing the process as being a thing contrary to his duty.

**52.** When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

*Illustrations.*

(a.) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act, Part IV. B may obtain an injunction not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b.) In the case put as illustration (bb) to section 51, the Court may also order all written communications made by B, as patient, to A, as physician, to be destroyed.

(c.) In the case put as illustration (cc) to section 51, the Court may also order A's letters to be destroyed.

(d.) In the cases put as illustrations (p), (q) and (r) to section 51, the Court may also order the copies produced by piracy, and the trademarks, labels and descriptions improperly used, by A to be destroyed.

Injunction when refused.

**53.** An injunction cannot be granted—

(a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings:

(b) to stay proceedings in a Court superior to that from which the injunction is sought:

(c) to restrain persons from applying to any legislative body:

(d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a foreign Government:

(e) to stay proceedings in any criminal matter:

(f) to prevent the breach of an agreement the performance of which would not be specifically enforced:

(g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance:

(h) to prevent a libel or other act, whether punishable by criminal law or not, which is not an invasion of the plaintiff's right to, or his enjoyment of, property, and is not inconsistent with any contract made by the defendant with the plaintiff, or with any special duty which the defendant owes to the plaintiff:

(i) to prevent a continuing breach in which the applicant has acquiesced:

(j) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust:

(k) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court:

(l) where the applicant has no personal interest in the matter.

*Illustrations.*

(a.) A being B's neighbour, and having no other relations with him, threatens to publish a statement concerning B which would be punishable under chapter XXI of the

Indian Penal Code. The Court cannot grant an injunction to restrain the publication, even though it may be injurious to B's property.

(b.) A, being B's medical adviser, threatens to publish B's communications with him, showing that B has led an immoral life: B may obtain an injunction to restrain the publication.

(c.) A applies for an injunction to restrain B from working mines under A's land. It appears that B has been working them with A's permission for eight years. The injunction should be refused.

(d.) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(e.) A manufactures and sells crucibles, designating them as "patent plumbago crucibles", though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

**54.** Notwithstanding section fifty-three, clause

(f), where a contract comprises an affirmative agreement to do a certain act,

coupled with a negative agreement express or implied not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement, shall not preclude it from granting an injunction to perform the negative agreement; provided that the applicant has not failed to perform the contract so far as it is binding on him.

*Illustrations.*

(a.) A agrees to sell to B for rupees 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the rupees 1,000, but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b.) A agrees to sell to B the good-will of a business. A then sets up a similar business close by B's shop, and solicits his old customers to deal with him. This is contrary to his implied agreement, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c.) A agrees with B, to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the agreement to sing, but he is entitled to an injunction restraining A from singing at any other place of entertainment.

(d.) B agrees with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this agreement. But he is entitled to an injunction restraining B from serving a rival-house as clerk.

(e.) A agrees with B that, in consideration of rupees 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

**SCHEDULE.**

(See section 2.)

Number and year.	Subject.	Extent of repeal.
VIII of 1850	Code of Civil Procedure ...	Secs 15 and 102.
XIV of 1859	Limitation Act ...	Sec. 15.



## STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill, which is intended as a supplement to the Code of Civil Procedure, as revised and published in March 1875, is to define and amend the law relating to specific and preventive relief.

2. Under the head of specific relief, it deals with suits for—

- (a) the possession of specific property, moveable or immoveable,
- (b) the specific performance of agreements,
- (c) the rectification of instruments,
- (d) the rescission of contracts,
- (e) the cancellation of instruments,
- (f) declaratory decrees, and
- (g) the enforcement of public duties.

3. Under the head of preventive relief, it treats of perpetual injunctions.

4. The chapter relating to the recovery of possession of specific property embodies the English rules as to detinue, and the useful provision of the Indian Act, XIV of 1859, section 15, as to the right of persons informally dispossessed of land to recover possession by a summary suit. Words have been introduced to show expressly that this provision does not apply to lands claimed to belong to Government. This exemption in effect resulted from section 17 of Act XIV of 1859.

5. The matter of the chapter relating to specific performance is distributed under the following heads:—

- (a) Agreements which may be specifically enforced:
- (b) Agreements which cannot be specifically enforced:
- (c) For whom agreements may be specifically enforced:
- (d) Of the discretion of the Court:
- (e) For whom agreements may not be specifically enforced:
- (f) For whom agreements may not be specifically enforced, except with a variation:
- (g) Against whom agreements may be specifically enforced:
- (h) Against whom agreements may not be specifically enforced:
- (i) The effect of dismissing a suit for specific performance.

It attempts to codify the English law on this subject with the following modifications:—

6. Subject to the negative rules afterwards set forth in this chapter, the Bill empowers the Courts to decree specific performance of any agreement when the parties have expressly agreed in writing that specific performance thereof may be required by either of them, or that damages shall not be considered adequate relief. This novel provision, taken from the New York Civil Code, is one of the means by which the Bill proposes to extend a useful jurisdiction, one, it may be remarked, peculiarly adapted to India, where the alternative remedy for a breach of contract, that, namely, of damages, is, owing to the poverty of the bulk of the population and the difficulty of executing money-decrees, often so utterly nugatory.

7. In England it has more than once been ruled that the Court of Chancery will not compel the performance of a continuous duty extending over many years. The Bill renders this doctrine more precise by declaring that an agreement, the performance of which necessarily involves the performance of continuous duties over a longer period than five years from its date, shall not be specifically enforced. Whether this is the best limit of time, will be a point for consideration before the Bill is passed.

8. With regard to specific performance of contracts to execute buildings or to cultivate lands, the Bill is intended to express the present law.

9. The rules as to when a contract for the sale of a married woman's estate will be specifically enforced are in England excessively complicated. The Bill makes no distinction in her case, and thus recognizes the principle embodied in the Indian Succession Act, section 4, and Act III of 1874.

10. In England a voluntary settlement of personal chattels is binding on the settlor and cannot be defeated by a subsequent sale. But it is otherwise in the case of freeholds, copyholds and leaseholds, and specific performance of a subsequent agreement to sell land may be enforced against the voluntary settlor and the parties claiming under the settlement. The Bill does not recognize this distinction (which is due to an artificial construction of 27 Eliz., c. 4), and treats land, in this respect, as if it were moveable property.

11. The absence in India of any enactments resembling the Statute of Frauds, sections 1, 3, 4 and 17, renders it unnecessary to embody in the Bill the intricate rules of the Court of Chancery as to when a parol agreement relating to land will, and when it will not, be specifically enforced.



12. It seems impossible to elicit a consistent doctrine from the English decisions as to the rights of a purchaser or lessee to specific performance with abatement or compensation when the title of the person agreeing to sell or lease is defective. The Bill lays down that only in one case can such relief be granted, namely, where the part of the agreement which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money. This will relieve the Courts from the exercise of a duty which, in many cases, must be more a matter of guesswork than of judicial discretion.

13. The right to enforce a contract specifically may, in England, be lost by delay in resorting to the Court, and a large mass of cases exists relating to this doctrine. The Bill contains no rules on the subject, for in India the provision of the Limitation Act (IX of 1871), schedule II, No. 113, that suits for specific performance must be brought within three years from the day on which the plaintiff has notice that performance is refused, renders the doctrine of laches inapplicable to this kind of litigation. See 2 Mad. High Court Rep. 114, 270.

14. It seems to be erroneously supposed by some of the Mofussil Judges that, when a contract is proved, the grant of a decree for its specific performance is a matter of course. Care has been taken in this chapter to show distinctly that the grant of such decrees is purely within the sound discretion of the Court.

15. As in this country all remedies on an agreement can be granted by one and the same Court, it is conceived that only one suit should lie on account of its non-performance. It has on this account been provided in section 28 that if a suit for specific performance is dismissed, no other suit shall be brought on the same agreement.

16. Chapter III, as to the rectification of instruments, chapter IV, as to the rescission of contracts and chapter V, as to the cancellation of instruments, require no special notice. They are taken, with a few verbal changes, from the New York Civil Code, and represent substantially the law on these subjects administered by English Courts of Equity.

17. Chapter VI, as to declaratory decrees, is intended to take the place of Act VIII of 1859, section 15, and differs from the English law on the subject principally in authorising the Court to make declarations of future rights, provided only that such rights are vested. In the absence of such a jurisdiction, it would seem to be necessary to authorise suits to perpetuate testimony, and there are obvious reasons why such suits should not be allowed in India.

18. Chapter VII deals with the subject of *mandamus*, and applies only to the Presidency High Courts. Care has been taken to exempt from orders under this chapter the Secretary of State in Council, the Government of India, and the Local Governments.

19. In Part III are contained some general rules as to when perpetual injunctions will, and when they will not, be granted. The chief modifications of the present law which the Bill proposes to make are as follows:—

20. By the Bill, the Courts are expressly given power to grant injunctions to do substantive acts, when such injunctions are necessary to prevent the breach of an obligation. In England, the same thing is partially effected by the indirect method of making orders, called mandatory injunctions, to refrain from leaving a thing undone.

21. Under the Bill, an injunction to restrain a partner may be obtained without seeking a dissolution of the partnership, even when the partnership is determinable at will. In England the rule on this subject is still unsettled.

22. In England a married executrix will, as a rule, be restrained from getting in the assets if her husband be out of the jurisdiction, or a lunatic. The reason is that the husband, and he alone, is liable for a *devastavit* committed by his wife. The Indian Succession Act, sections 4 and 275, appears to relieve husbands of this liability, and the Bill accordingly contains no provision on the subject.

23. It is hardly necessary to observe that, in a country where law and equity are administered by the same Courts, the subject of staying legal proceedings need not be dealt with at much length. The provisions of the Bill relating to this matter are contained in section 56, clause (c), illustration (m), and in section 57, clauses (a) and (b), which relate to injunctions necessary to prevent a multiplicity of suits.

24. It may, in conclusion, be remarked that most of the many illustrations contained in the Bill are taken from the English Equity Reports.

SIMLA,  
The 25th October 1875. }

A. HOBHOUSE.

WHITLEY STOKES,

Secy. to the Govt. of India.



# The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, DECEMBER 18, 1875. { Register  
No. 75.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced into the Council of the Governor General for making  
Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 7th December 1875, and was referred to a Select Committee with instructions to make their report thereon in three months:—

No. 13 of 1875.

### THE SPECIFIC RELIEF BILL, 1876.

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## SCHEDULE.—Enactments repealed.

*A Bill to define and amend the Law relating to certain kinds of specific Relief.*

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

## PART I.

## PRELIMINARY.

1. This Act may be called “The Specific Relief Act, 1876.”

It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874;

Local extent.

And it shall come into force three months after the passing thereof.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in its third column.

Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context,—

‘discretion’ means a sound and reasonable discretion, exercised according to the rules for the time being in force in the Courts of Civil Judicature:

‘obligation’ includes every duty the breach of which is punishable by law:

‘agreement’ includes also an award and an obligation constructively created by operation of law:

‘trust’ includes every species of express, implied, or constructive fiduciary ownership:

‘trustee’ includes every person holding, expressly, by implication, or constructively, a fiduciary character:

## Illustrations.

(a). Z bequeaths land to A, ‘not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.’ A is a trustee within the meaning of this Act for B to the extent of the annuity.

(b). A is the legal, medical, or spiritual adviser of B. A gains some pecuniary advantage by availing himself of his situation as such adviser. A is a trustee within the meaning of this Act of such advantage.

(c). A, being B’s banker, discloses for his own purposes the state of B’s account. A is a trustee within the meaning of this Act of the benefit gained by him by means of such disclosure.

(d). A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee within the meaning of this Act of the renewed lease.

(e). A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee within the meaning of this Act of the profit so made.

(f). A buys certain land with notice that B has already contracted to buy it. A is a trustee within the meaning of this Act of the land so bought.

(g). A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee within the meaning of this Act to the extent of that interest.

'settlement' means any instrument (other than a will or codicil) whereby the destination or devolution of moveable or immoveable property is settled or agreed to be settled.

4. Except so far as they are embodied in this Act, the provisions of the English law how far law of England shall not be inapplicable. applicable to the kinds of relief hereinafter mentioned.

Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed—

(a) to give any right to relief in respect of any agreement which, according to the general law applicable to contracts, is not a valid contract: or

(b) to deprive any person of any right to relief other than specific performance which, according to the same law, he may have under any contract.

Specific relief how given. 5. Specific relief is given—

(a) by taking possession of certain property and delivering it to a claimant;

(b) by ordering a party to do the very act which he is under an obligation to do;

(c) by prohibiting a party from doing that which he is under an obligation not to do; or

(d) by declaring and determining the rights of parties otherwise than by an award of compensation.

6. Relief granted under clause (c) of section five is called preventive relief. Preventive relief.

7. Specific or preventive relief cannot be granted for the mere purpose of enforcing a penal law. Purposes for which relief cannot be given.

## PART II. OF SPECIFIC RELIEF.

### CHAPTER I.

#### OF RECOVERING POSSESSION OF PROPERTY.

##### (a).—Possession of Immoveable Property.

8. A person entitled to specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure. Recovery of specific immoveable property.

9. If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit instituted within six months from the date of the dispossession, recover possession thereof, notwithstanding any other title that may be set up in such suit. Suit by person dispossessed of immoveable property.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

Nothing in this section applies to immoveable property claimed to belong to the Crown.

##### (b).—Possession of Moveable Property.

10. A person entitled to the immediate possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure. Recovery of specific moveable property.

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which another is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

##### Illustrations.

(a). A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title deeds. B may recover them from C.

(b). A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c). A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d). A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.

(e). A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;

(b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss.

##### Illustrations.

(a). A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

(b). A, a colliery-owner, keeps for the purpose of his business fifty coal-wagons. A sells B 50,000 tons of coal and lets to him the wagons to convey the coal. B, without A's authority, pledges the wagons to C, who threatens to sell them immediately. C may be compelled to deliver the wagons to A, for they are necessary for conducting his business, and their loss would cause him an injury for which money would not be an adequate compensation.

(c). A is entitled to a picture by a dead painter and a pair of rare China vases. B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

## CHAPTER II.

## OF THE SPECIFIC PERFORMANCE OF AGREEMENTS.

(a). *Agreements which may be specifically enforced.*

12. Except as otherwise provided in this chapter, the specific performance of any agreement may in the discretion of the Court be enforced—

Cases in which specific performance enforceable

(a) when it has been expressly agreed in writing between the parties to the agreement that specific performance thereof may be required by either party, or that compensation in money shall not be considered adequate relief for its non-performance:

(b) when the act agreed to be done is in the performance, wholly or partly, of a trust:

(c) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done: or

(d) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief:

(e) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is shewn, it is to be presumed that the breach of an agreement to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of an agreement to transfer moveable property can be thus relieved.

*Illustrations.*

(a). A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

(b). A sells 500 tons of iron stacked on his wharf to B, in consideration of a bill accepted by C, and undertakes in writing to deliver the iron to bearer, he (A) 'having been paid for the same.' B mortgages the iron to D. The bill is dishonoured. A refuses to deliver the iron. A holds the iron as a trustee for D, and D may compel him specifically to perform his agreement.

(c). A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. The articles are of too special a character to bear an ascertainable market-value. A may compel B specifically to perform this agreement, for it would be extremely difficult to ascertain the actual damage caused by its non-performance.

(d). A transfers without endorsement, but for valuable consideration, a note to B. A becomes insolvent, and C is appointed his assignee. B may compel C to endorse the note, for C has succeeded to A's liabilities, and a decree for pecuniary compensation for not endorsing the note would be fruitless.

(e). A, B and C agree to enter into partnership for a definite term under the style of A & Co. A refuses to carry out the agreement. B and C may compel A to join them in executing a proper partnership-deed, for the interest of B and C in the performance of the agreement cannot be adequately compensated for by money.

(f). A agrees with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

(g). In consideration of being released from certain obligations imposed on it by its Act of incorporation, a railway company agree with Z to make and maintain an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct and maintain a siding and a wharf as specified in the agreement. Z is entitled to have this agreement specifically enforced, for his interest in its performance cannot be adequately compensated for by money; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

(h). A agrees to sell, and B agrees to buy, a certain number of railway-shares of a particular description. A refuses to complete the purchase. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

(i). A agrees with B to paint a picture for B, who agrees to pay therefor rupees 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the rupees 1,000.

(j). A advances Rs. 10,000 to B, and B agrees to execute a mortgage of certain houses 'with an immediate power of sale' to secure the repayment of the advance. A requires B either to pay off the advance at once or to execute the mortgage. B refuses. A is entitled to have the agreement specifically performed.

13. When either of the parties to an agreement is entitled to a specific performance thereof according to the provisions of section twelve, the other party is also entitled to it, though not within those provisions.

*Illustration.*

A agrees to sell, and B agrees to buy, a patent for 10,000 rupees. B declines to complete the purchase. Here, though pecuniary compensation for its non-performance might afford A adequate relief, A may enforce the agreement specifically, for, if he had declined to complete it, B would have been entitled to a specific performance thereof.

14. Where a party to an agreement is unable to perform the whole of the agreement, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the agreement as can be performed, and award compensation in money for the deficiency.

*Illustrations.*

(a). A agrees to sell B a piece of land consisting of 100 bighas. It turns out that 98 bighas of the land belong to A, and the two remaining bighas to a stranger, who refuses to part with them. The two bighas are not necessary for the use or enjoyment of the 98 bighas, and the loss of them may be made good in money. A may be directed at the suit of B to convey to B the 98 bighas and to make compensation to him for not conveying the two remaining bighas; or B may be directed, at the suit of A, to pay to A on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b). In a contract for the sale and purchase of a house and lands for two lakhs of rupees it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to an agreement is unable to perform the whole of the agreement and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, the party in default is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the agreement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the deficiency, or for the loss or damage sustained by him through the default of the other party.



*Illustrations.*

(a). A agrees to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b). A agrees to sell to B an estate with a house and garden for 1,00,000 rupees. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree, directing A to convey the house to him on payment of the purchase-money.

16. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the specific performance of a part of an agreement.

17. Where a person agrees to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this chapter) has the following rights:—

(a) if the vendor or lessor has subsequently acquired any interest in the property, the purchaser or lessee may compel him to make good the agreement out of such interest;

(b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence;

(c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and obtain a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the agreement, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to the costs of the suit, and to a lien for such deposit, interest and costs on the property agreed to be sold or let.

18. Any person suing for the specific performance of an agreement, may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a valid agreement between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case,

and that some compensation for breach of the agreement should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the agreement has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

*Illustrations.*

(a). A, a purchaser, sues B, his vendor, for specific performance of an agreement for the sale of a patent. Before the hearing of the suit, the patent expires. The Court may award A compensation for the non-performance of the agreement.

(b). A agrees with B to sell him a house for Rs. 1,000 the price to be paid and the possession given on the 1st January 1876. A fails to perform his part of the agreement, and B brings his suit for specific performance, which is decided in his favour on the 1st January 1877. The decree may, besides ordering specific performance, award to B compensation for any loss or damage which he has sustained by A's refusal.

(c). A sues for the specific performance of a resolution passed by the directors of a public company, under which he was entitled to have a certain number of shares allotted to him. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

(d). A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the agreement or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it without excuse to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

19. An agreement, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in the agreement as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

*Illustration.*

A agrees to grant B an underlease of property held by A under C, and covenants that if C refuses to grant a license necessary for that purpose, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the agreement specifically enforced.

(b). Agreements which cannot be specifically enforced.

20. The following agreements cannot be specifically enforced:—

(a) an agreement for the breach of which compensation could not be recovered;

(b) an agreement for the non-performance of which compensation in money is an adequate relief, and which does not come within section twelve, clause (a);

(c) an agreement which runs into such minute or numerous details, or which from its nature is such, that the Court cannot enforce specific performance of all its material terms;

(d) an agreement which is in its nature revocable;

(e) an agreement entered into by trustees either in excess of their powers or in breach of their trust;

(f) an agreement entered into by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;

- (g) an agreement the performance of which involves the performance of a continuous duty extending over a longer period than five years from its date;
- (4) an agreement to submit a controversy to arbitration.

#### Illustrations.

To (a).—A agrees in consideration of Rs. 500 to obtain an office under the Crown for B. This agreement cannot be specifically enforced.

A, a banker holding bills as a security for advances to B, takes a guarantee from B's brother, C, that the loss to the bank should not exceed Rs. 20,000. This transaction took place after B had commenced proceedings for the liquidation of his affairs and unknown to his other creditors with a view to prevent A from opposing a composition. The guarantee cannot be specifically enforced, as the transaction would have the effect of giving A an undue advantage over B's other creditors.

A, a military pensioner of Government, in consideration of Rs. 500, agrees to assign to B all future payments in respect of his pension. This agreement cannot be specifically enforced.

A husband and wife, professing the Christian religion, enter into an agreement providing for their future separation. This agreement cannot be specifically enforced.

A agrees to grant B a lease of a certain house. The length of the term to be granted is not stated, nor the date at which it is to commence. This agreement cannot be specifically enforced.

A agrees with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated." This agreement cannot be specifically enforced.

Z, a resident in Calcutta, agrees, as trustee for B, a resident in Australia, to sell to C an annuity to which B is entitled for his life. The day before the date of the agreement B had died. Z cannot enforce this agreement.

A, the lessee of a house much out of repair, agrees to sell the lease to B. Before the sale, A receives from his landlord a notice of re-entry in default of the premises being repaired. A does not communicate this notice to B, who enters and is ejected in consequence of the non-repair. A cannot enforce the agreement against B.

A, the owner of a patent, agrees to sell it to B. B institutes a suit to compel specific performance of this agreement. Before the suit is heard the patent expires. Specific performance of the agreement cannot be compelled.

On A's marriage with B, A's father, C, agrees with B's father, D, to settle certain lands on A and his children by B. D sues C to enforce specific performance of this agreement. C proves that the agreement was conditional on D settling a lakh of rupees on A and his children by B, and that D had not settled such lakh accordingly. The suit must be dismissed.

A, an author, agrees with B, a publisher, to complete a literary work, and dies before doing so. The agreement requiring A's personal skill and taste is discharged by his death, and B cannot enforce its performance as against A's representative.

A, a shoemaker, agrees with B to receive B's son as an apprentice for a term of years and teach him shoemaking. A dies before the expiration of the term. B cannot enforce performance of the agreement.

A and B enter into an agreement to become partners for a term and afterwards agree to rescind it.

A agrees to buy B's business at the amount of a valuation to be made by two valuers, one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

A agrees to buy certain houses in Calcutta, and before the completion of the agreement becomes insolvent. A's assignee, in exercise of his option under the Indian Insolvent Act, abandons the agreement.

In none of these cases can the agreement be specifically enforced.

To (b).—A agrees to sell, and B agrees to buy, a lakh of rupees in the four per cent. loan of the Government of India.

A agrees to sell, and B agrees to buy, 40 chests of indigo at Rs. 1,000 per chest.

In consideration of certain property having been transferred by A to B, B agrees to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

These agreements cannot be specifically enforced, for, in the first and the second both A and B, and in the third A, would be reimbursed by compensation in money.

To (c).—A agrees to render personal service to B.

A agrees to employ B on personal service.

By a charter party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London.

These agreements cannot be specifically performed.

A lets land to B and B agrees to cultivate it in a particular manner for three years next after the date of the lease. A is not entitled to have this agreement specifically performed.

A and B agree that in consideration of annual advances to be made by A, B will for three years next after the date of the agreement grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery. A is not entitled to have this agreement specifically performed.

A agrees with B that in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B.

A agrees with B to execute certain works which the Court cannot superintend.

A agrees to supply B with all the goods of a certain class which B may require.

These agreements cannot be specifically enforced.

To (d).—A and B agree to become partners in a certain business, the agreement not specifying the duration of the proposed partnership. This agreement cannot be specifically performed, for, if it were so performed, either A or B might at once dissolve the partnership.

To (e).—A is a trustee of land with power to lease it for seven years. He enters into an agreement with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This agreement cannot be specifically enforced.

The directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders. They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, agree to sell it to C for Rs. 30,000. The agreement is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines agree that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

To (f).—A railway company contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

To (g).—A agrees to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

#### (c). Of the Discretion of the Court.

21. The jurisdiction to decree specific performance as to decree-ance is discretionary, and in specific performance. the Court is not bound to grant such relief, merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.



The following are cases in which the Court may properly exercise a discretion not to decree specific performance:—

I. Where, though it is clear that an agreement has been made and broken, the Court cannot find, with reasonable certainty, what are the terms of the agreement of which specific performance is sought.

*Illustration.*

(a). A, the owner of a refreshment-room, agrees with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to perform his agreement. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

II. Where the circumstances under which the agreement is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

*Illustrations.*

(b). A tenant for life of certain property assigns his interest therein to B. C agrees to buy, and B agrees to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is completed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance. If B knew the fact and C did not, specific performance should be refused to B.

(c). A agrees to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the agreement should be refused to A.

(d). A agrees to sell, and B agrees to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A industriously conceals it from him. Specific performance should be refused to B.

(e). A's property is put up to auction in one lot. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance should be refused to B.

(f). A contracts with B who at the time is intoxicated. Specific performance should be refused to A.

III. Where the performance of the agreement would involve some hardship on the defendant which he did not foresee, whereas no such hardship would fall on the plaintiff if the agreement was not performed.

*Illustrations.*

(g). A is entitled to some land under his father's will on condition that, if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, agrees, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the agreement would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(h). A and B, trustees, join their beneficiary, C, in an agreement to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the agreement, the vendors believed it to be sufficient. Specific performance of the agreement should be refused to D.

(i). A, the owner of an estate, agrees to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property not known to either to be part of it. Specific performance of the agreement should be refused to B unless he waives his claim to the unknown property.

(j). A agrees with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing

himself to litigation. Specific performance of the part of the agreement relating to the road should be refused to B, though he may be entitled to specific performance of the rest with compensation for loss of the road.

(k). A, a lessee of mines, agrees with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance should be refused to B.

(l). A agrees to buy certain land from B. The agreement is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(m). A agrees with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them, A may be ruined unless he is allowed to buy them elsewhere. Specific performance of the agreement should be refused to B.

IV. The circumstance that the plaintiff has done substantial acts or suffered losses in consequence of an agreement susceptible of specific performance is one which the Court may reasonably consider in exercising its discretion to grant specific performance of such agreement.

*Illustration.*

A sells land to a railway company who agree to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the agreement to execute the works should be awarded in favour of A.

(d.) *For whom Agreements may be specifically enforced.*

22. Except as otherwise provided by this chapter, the specific performance of an agreement may be obtained by—

(a) any party thereto:

(b) the representative in interest, or the principal, of any party thereto: provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the agreement, or where the agreement provides that his interest shall not be assigned, his representative in interest or principal shall not be entitled to specific performance of the agreement:

(c) where the agreement is a settlement on marriage, any person beneficially entitled thereunder:

(d) where the agreement has been entered into by a tenant for life in due exercise of a power, the remainderman:

(e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant:

(f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach:

(g) when a public company has entered into an agreement and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation:

(h) when the promoters of a public company have, before its incorporation, entered into an agreement for the purposes of the company, and such agreement is warranted by the terms of the incorporation, the company.

(e). *For whom Agreements cannot be specifically enforced.*

23. An agreement for the sale or letting of property cannot be specifically enforced in favour of a vendor or lessor—  
 Agreement to sell property by one who has no title or who is a voluntary settlor.

(a) who, knowing himself not to have any title to the property, has agreed to sell or let the same;

(b) who, though he entered into the agreement believing that he had a good title to the property, cannot at the time fixed by the parties or by the Court for the completion of the sale or letting give the purchaser or lessee a title free from reasonable doubt;

(c) who, previous to entering into the agreement, has made a voluntary settlement of the subject-matter thereof.

*Illustrations.*

(a). A agrees to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this agreement, even though C is willing to confirm it.

(b). A bequeaths his land to trustees, declaring that they should not sell it without the consent in writing of his sons and daughters. A dies. Then one of his daughters dies. The trustees then enter into an agreement with B to sell him the land. B refuses to carry out the agreement. The trustees cannot specifically enforce this agreement, as the title which they can give B is not free from reasonable doubt.

(c). A makes a voluntary settlement of certain property on his brothers and their issue, and afterwards enters into an agreement to sell the property to a stranger. A cannot enforce specific performance of this agreement so as to override the settlement and thus prejudice the interests of the persons claiming under it.

24. Specific performance of an agreement cannot be enforced in favour of a party—  
 Personal bars to the relief.

(a) who could not recover compensation for its breach;

(b) who has become incapable of performing, or violates, any essential term of the agreement that on his part remains to be performed; or

(c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract;

(d) who, previously to entering into the agreement, had notice that a voluntary settlement of the subject-matter thereof had been made and was then in force.

*Illustrations.*

(a). A agrees to sell B a house and to become tenant thereof for a term of 14 years from the date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the agreement. Neither can B, although he might recover compensation from A's assignee for breach of the agreement.

(b). A agrees to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A without B's consent fells the trees. A cannot enforce specific performance of the agreement.

(c). A, holding land under an agreement with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce the agreement.

(d). A agrees to let, and B agrees to take, an unfinished house, B agreeing to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the agreement, though A and B may sue each other for compensation for breach of the agreement.

(e). A agrees to let, and B agrees to take, a house for a specified term at a specified rent. B refuses to perform the agreement. A thereupon sues for and obtains compensation for the breach of contract. A cannot obtain specific performance of the agreement.

(f). *For whom Agreements cannot be specifically enforced except with a variation.*

25. Where a plaintiff seeks specific performance of an agreement in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought except with the variation so set up, in the following cases (namely):—

(a) where by fraud or mistake of fact the agreement of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it;

(b) where by fraud, mistake of fact, or surprise the defendant entered into the agreement under a reasonable misapprehension as to its effect as between himself and the plaintiff;

(c) where the defendant, knowing the terms of the agreement and understanding its effect, has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which goes to vary the agreement, but which he refuses to fulfil;

(d) where the parties have varied the agreement subsequently to its execution.

*Illustrations.*

(a). A, B and C sign a writing by which each agrees to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word 'each' was inserted by mistake; that the intention was that they should give a joint bond for Rs. 1,000. A cannot obtain the performance sought only with the variation thus set up.

(b). A sues B to compel specific performance of an agreement in writing to buy a dwelling-house. B proves that he assumed that the agreement included an adjoining yard, and the agreement was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the agreement, except with the variation set up by B.

(c). A agrees in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the agreement, B proposed orally that he should be at liberty to substitute for the strip mentioned in the agreement another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written agreement. A cannot obtain specific performance of the written agreement except with the variation set up by B.

(d). A agrees in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so with B's consent A pulls it down and erects a new house in its place: B agreeing orally to pay rent at Rs. 120 per mensem. B then sues to compel specific performance of the agreement in writing. He cannot enforce it except with the variations made by the subsequent oral agreement.

(g). *Against whom Agreements may be specifically enforced.*

26. Except as otherwise provided by this chapter, specific performance of an agreement may be enforced against—  
 Relief against parties and persons claiming under them by subsequent title.

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the agreement, except a transferee for value, who has paid his money in good faith and without notice of the original agreement;

(c) any person claiming under a title which, though prior to the agreement, and known to the plaintiff, might have been displaced by the defendant;